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REVISED CODES OF MONTANA

VOLUME 1

1957 Cumulative Pocket Supplement

Containing

MENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

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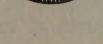
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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

AMENDMENT 22

1. No person shall be elected to the office of the president more than twice, and no person who has held the office of president, or acted as president, for more than two (2) years of a term to which some other person was elected president shall be elected to the office of president more than once. But this article shall not apply to any person holding the office of president when this article was proposed by the congress, and shall not prevent any person who may be holding the office of president, or acting as president, during the term within which this article becomes operative from holding the office of president or acting as president during the remainder of such term.

2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths (¾) of the several states within seven (7) years from the date of its submission to the states by the congress.

NOTE.—This amendment was submitted by Congress on March 24, 1947 and declared in force on March 1, 1951 having been ratified by the necessary 36 states, including Montana.

ORGANIC ACT

OF THE

TERRITORY OF MONTANA

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§ 14. * * *

References

Cited or applied in Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

THE ENABLING ACT

§ 10. * * *

Operation and Effect

This is a general granting clause and shows clearly the interest of the Congress in the common schools of the newly admitted state. Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

§ 11. * * *

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

Compiler's Note

The second paragraph of sec. 11 of the Enabling Act, as amended April 13, 1948, ch. 183, 62 Stat. at L. 170, is set out above. This amendment was accepted by the state of Montana by Chapter 18, Laws of 1949.

Oil and Gas Leases

The amount bid over the minimum of 75 cents per acre as established in section 81-1703 is considered part of the rental and thus placed in the common school interest and income fund to be apportioned and distributed annually to the several school districts in the state as provided in Article XI, Section 5 of the Constitution of Montana. State ex rel. Dickgraber v. Sheridan, 126 M 447, 254 P 2d 390. (See, however, dissenting opinions of Justices Anderson and Angstman in 126 M 447, 254 P 2d 390 on pages 397 and 403 respectively.)

The 1953 amendment of section 81-1702 by chapter 122, Laws of 1953, is not inconsistent with federal law. State ex rel. Johnson v. State Board of Land Comrs., 348 U S 961, 99 L Ed 750, 75 S Ct 524, reversing and remanding State ex rel. Jones v. State Board of Land Comrs., 128 M 462, 279 P 2d 393, which had held that oil and gas leases issued under section 81-1702 as amended in 1953 for 20 years and "as long thereafter as oil and gas in paying quantities shall be produced" were not for a term of years and hence violative of section 11 of the enabling act.

Operation and Effect

The Enabling Act restrictions apply to mineral rights on state lands. A lease of the mineral rights by the state for a period of 5 years, made in 1925, with options to renew, cannot run in total more than 20 years, since Congress in 1921 amended § 11 of the Enabling Act by the Act of Aug. 11, 1921, 42 Stat. 158 which limited such leases to 20 years and the amendment was accepted by Montana in 1927 by Laws 1927, Ch. 108 (81-1701 et seq.). Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

References

Cited in United States v. Wyoming, 331 U S 440 91 L Ed 1590, 67 S Ct 1319; Cranston v. Aronson, 124 F Supp 453, 454.

§ 12. That upon the admission of each of said states into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said states for public buildings at the capital of said states for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary

land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.

Compiler's Note

Section 12 of the Enabling Act, as amended by Public Law 6, 85th Congress, approved February 26, 1957, is set out above. This amendment was accepted by the state of Montana by Chapter 209, Laws of 1957 (83-503).

Operation and Effect before Amendment

Capitol land grant funds may be used to repair, renovate or reconstruct an old building and install a roll call voting machine in the chambers of the house of representatives. State ex rel. Morgan v. Board of Examiners et al., — M —, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners et al., — M —, 305 P 2d 340.

§ 18. * * *

Construction

This section must be read with reference to section 14 of The Organic Act. The words "shall be found" and "in lieu thereof" show that this section applies to lands known to be mineral at the time of survey and clear listing. As soon as the survey identified the land and it was not then mineral it went to the state for the common school fund. The land passed and with it the after-discovered minerals. Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

§ 19. * * *

References

Cited or applied in Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

CONSTITUTION

OF THE

STATE OF MONTANA

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

Sec. 1.

References

Cited or applied in State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

Sec. 2.

References

Cited or applied in State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

Sec. 3.

Statutes Invalid under This Provision

Section 2620.45 of the Revised Codes of 1935 (3-2445) levying a tax on dealers in oleomargarine was in violation of this section in that it denied the right to carry on a lawful business without due process of law. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

Sections 66-1701 et seq., known as the Photographic Examiners Act is unconstitutional as it violates this section and sec. 27, Art. 3 of the Montana Constitution and section 1 of 14th Amendment to the Constitution of the United States. State v. Gleason, 128 M 485, 277 P 2d 530.

Sec. 5.

References

Cited or applied in State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

Sec. 6.

Appeals by Poor Persons

District court has authority and acts within its jurisdiction in issuing an order directing the official court stenographer to furnish to convicted person unable to pay for services, a full and complete transcript on appeal including the number of copies required for appeal under the court's rules, and stenographer is entitled to pay from county for furnishing such copies. Sullivan v. Board of County Comrs., 124 M 364, 224 P 2d 135, 137.

Indians

Indians may sue and be sued in Montana state courts. Bonnet v. Seekins, 126 M 24, 243 P 2d 317, 318.

References

Cited or applied in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1024; Higby v. Harper, 124 M 331, 221 P 2d 1043, 1048; State ex rel. Irvine v. District Court, 125 M 398, 239 P 2d 272, 281.

Sec. 7.

References

Cited in State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1000.

Sec. 8.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

Sec. 11.

Laws Impairing the Obligation of Contracts

That part of Laws 1945, Ch. 137, amending secs. 1 and 6 of Laws 1937, Ch. 87 (the Teachers' Retirement Act, secs. 75-2701, 75-2707) by changing the interest to which a withdrawing member would be entitled was invalid as to contributions made both before and after the effective date of such act. Clarke v. Ireland, 122 M 191, 199 P 2d 965, 970.

When a city council has created a housing authority under sections 35-101 to 35-146 and entered into a cooperation agreement with the housing authority such as is required by 42 U.S.C. 1415 (7) (b) (i) before the granting of federal loans, it cannot later pass an ordinance which repudiates the cooperation agreement without violating this section of the Constitution. State ex rel. Helena Housing Authority v. City Council of Helena, 125 M 592, 242 P 2d 250, 255.

Laws Not Violating This Provision

Where trust was created in 1915 and the transfer was taxed on the inheritance tax rate in existence in 1945, the time of the settlor's death, there was no violation of this section. In re Kohr's Estate, 122 M 145, 199 P 2d 856, 862, 5 ALR 2d 1046.

Sec. 13.

References

Cited or applied in State v. Nickerson, 126 M 157, 247 P 2d 188, 192, 193.

Sec. 15.

Expenses of Action

Under this constitutional provision and statutes enacted to implement it, attorney's fees are not allowed as an expense of the proceedings to open a private road of necessity. Tomten v. Thomas, 125 M 159, 232 P 2d 723, 724, 725, 26 ALR 2d 1285.

Public Use

Impounding of water for the irrigation of a ranch was a public use and a lawful undertaking. Richland County v. Anderson, — M —, 291 P 2d 267, 270; Farmers Union Oil Co. v. Anderson, — M —, 291 P 2d 604, 606.

References

Cited in the dissenting opinion in Midkiff v. Kincheloe, 127 M 324, 263 P 2d 976, 979.

Sec. 16.

Advising Defendant of Nature and Cause of Accusation Against Him

Information which charges defendant with an infamous crime against nature and also described the manner in which the crime was committed which was an assault, such information did not leave the defendant in the dark as to the nature and cause of the accusation. In plain and concise language he was accused of the infamous crime against nature, which of necessity, like the crime of rape, involved an assault as a part of the act. State v. McSloy, 127 M 265, 261 P 2d 663, 664.

Construction

It was error for the trial court to allow the testimony of a witness at the first trial to be read into evidence at the second trial. It was the right of the defendant to have the jury see and observe the witness upon the witness stand. It was his right that the jury see how the witness acted while under direct and cross-examination. It was his right to have the jury judge the credibility of the witness from his appearance and manner while on the witness stand. None of these rights could be had except and unless the witness met the defendant "face to face" in the presence of the jury during the course of trial. State v. Storm, 127 M 414, 265 P 2d 971, 973. (See, however, the dissenting opinion in 127 M 414, 265 P 2d 971, 975.)

On the second trial of a defendant the testimony of a state witness given at the first trial could not be read into evidence at the second trial since to do so would be to deprive the defendant of his right to meet a witness face to face. State v. Piveral, 127 M 427, 265 P 2d 969, 970. (See, however, dissenting opinion in 127 M 427, 265 P 2d 969, 970.)

Impartial Jury

Trial court was in error for refusing to grant the defendant a change of venue where evidence disclosed that local newspapers had fanned the feeling of the community against the defendant and that county officials themselves felt that the feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579,

269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Right of Accused to Meet Witnesses Against Him Face to Face

Constitutional right to meet witnesses face to face and to demand nature and cause of accusation can be made ineffective if state can conceal names of its witnesses until day of trial. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1042.

Right to Trial by Impartial Jury

This provision and sections 93-1404 and 93-1502 show that it is the intention that every person is entitled to a trial by a jury called by lot from the whole body of qualified jurors in the county, while section 93-1506 provides for a box of jurors' names residing in the city or town which can be used in emergencies as specified in section 93-1510. It is though, an abuse of discretion on the part of the trial judge to use jurors from the latter group when six days before the trial the defendant pointed out the inadequacies of the panel jury and requested additional jurors from the box of names comprising qualified jurors of the whole of the county, and such motion was denied by the judge. It amounts to a systematic and calculated exclusion of persons residing throughout the county at large other than those living in the city. State v. Porter, 125 M 503, 242 P 2d 984, 986.

Venue of Criminal Actions

While indirect methods of establishing venue in criminal cases is not approved, where there was evidence that the offense occurred in Whitefish, Montana, it sufficiently established that the offense was committed in Flathead County; Whitefish being shown within the boundaries of Flathead County on the official map. State v. Williams, 122 M 279, 202 P 2d 245, 246.

References

Cited or applied in State v. Holt, 121 M 459, 194 P 2d 651, 663; State v. Saginaw, 124 M 225, 220 P 2d 1021, 1024; State ex rel. Irvine v. District Court, 125 M 398, 239 P 2d 272, 281.

Sec. 17.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 972.

Sec. 18.

Operation and Effect

Where petition for deposition alleges facts which show that the person whose testimony is desired could be charged with a felony; to compel the person to so testify would violate this section. State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

The protection afforded by this section is accorded a person even though the proceeding in which he is to testify is a civil one. State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

Requiring suspect or defendant in criminal case to demonstrate voice for purposes of identification. 16 ALR 2d 1322.

Pretrial requirement that suspect or accused wear or try on particular apparel as violating constitutional rights. 18 ALR 2d 268.

Sec. 19.

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. 23 ALR 2d 803.

Sec. 23.

Directed Verdict in Criminal Case

In a prosecution for unlawfully driving a truck with an overload, a misdemeanor, it was error for the court to instruct and direct the jury to return a verdict of guilty where the evidence as to the true weight of the truck was in conflict as shown by two different state police scales. State v. Baillargeron, 126 M 310, 249 P 2d 799, 801.

Pre-Trial Conference

The provisions of section 93-4905 granting the court permission to require a pretrial conference do not violate the constitutional guarantee of a jury trial. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

Recovery on a Foreign Judgment

An action to recover a money judgment on a foreign judgment and to recover spe-

cific personal property with damages is clearly an action at law and is an action in which a party cannot be denied a jury trial. Little v. Little, 127 M 152, 259 P 2d 343, 344.

Sec. 27.

Fair trial

To deny a defendant in any criminal case the right to a change of venue or place of trial from a county where he cannot be tried by an impartial jury is to deny such defendant the fair trial guaranteed by this section. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Statutes and Proceedings Held Invalid Under This Provision

Section 2620.45 of the Revised Codes of 1935 (3-2445) levying a tax on dealers in oleomargarine was in violation of this section in that it denied the right to carry on a lawful business without due process of law. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

Sections 66-1701 et seq., known as the Photographic Examiners Act declared unconstitutional as it violates this section and sec. 3, Art. 3 of the Montana Constitution and section 1 of the 14th Amendment to the Constitution of the United States. State v. Gleason, 128 M 485, 277 P 2d 530.

Statutes and Proceedings Held Valid Under This Provision

The Grass Conservation Act (46-2301 to 46-2332) does not violate this section. Thompson v. Tobacco Root Co-op. State Grazing Dist., 121 M 445, 193 P 2d 811, 814.

Where trust was created in 1915 and the transfer was taxed on the inheritance tax rate in existence in 1945, the time of the settlor's death, there was no violation of this section. In re Kohr's Estate, 122 M 145, 199 P 2d 856, 862, 5 ALR 2d 1046.

References

Cited in Pilon v. Warren, 120 M 529, 189 P 2d 447; State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1000; cited or applied in State v. Holt, 121 M 459, 194 P 2d 651, 663; In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 662.

Sec. 29.

References

Cited or applied in Lindeen v. Liquor Control Board, 122 M 549, 207 P 2d 977; State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; Rankin v. Love, 125 M 184, 232 P 2d 998, 1000; State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 613; Carlson v. Flathead County, — M —, 293 P 2d 279, 284.

ARTICLE IV—DISTRIBUTION OF POWERS

Sec. 1.

Interference of Executive in Judiciary

Governor is not empowered to exclude or remove from office the duly elected, qualified and acting judge of a judicial district or to order the judge of another district into his district. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

Separation of Powers

Chapter 143, Laws of 1953 which purported to create the "Montana Legislative Council" and under which all of the members of the council were also members of the legislature contravenes this section. The act permits the legislative department through this council, to exercise powers of investigation properly belonging to the executive and judicial departments of the state government. It permits the legislative department through this council, to exercise powers of the judicial department by giving such council the power to "compel the attendance of witnesses before its hearings and require the production of papers, documents or other evidence required by it, and to issue subpoenas for such purposes." State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 613.

Statutes Held Not to Violate This Provision

Initiative Measure No. 54, Laws 1951, p. 781 (84-5606 and Compiler's Notes thereunder) providing for the payment of a soldiers' bonus and authorizing the state board of examiners to issue bonds with which to pay the bonus, and providing for an additional cigarette tax with which to retire the bonds was not a delegation of legislative powers to the board, since standards are set up in the act. The act specifically defines the persons entitled to receive the honorarium, and irrevocably sets aside the tax for the payment of a sum which can be made certain. The amount needed to pay the honorarium and the income to be received from the cig-

arette tax are both unknown, and therefore properly left to the determination of the board. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 292.

References

Cited or applied in the dissenting opinion in Tabor v. Industrial Acc. Fund, 126 M 240, 247 P 2d 472, 477.

ARTICLE V—LEGISLATIVE DEPARTMENT

Sec. 1.

"Appropriation" Defined and Limitations on under This Provision

Constitutional prohibition against appropriations of money by initiative is directed solely to appropriations from the general funds; hence, Initiative Measure No. 54, Laws 1951, p. 781 (84-5606 and Compiler's Notes thereunder) which provides for an additional cigarette tax with which to pay a soldiers' bonus, and that such additional tax is to go into a special fund and be used only for that special purpose, does not violate this provision. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 293.

Initiative—Technical Objections to, or Sufficiency of Petition Disregarded after Election

After the people have voted on a matter and a great majority of the voters have expressed their approval, the courts presume that the public interest was there and objections that there were not the required number of signatures on the petition are disregarded. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 288, 289.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

Sec. 2.

References

Cited or applied in State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 613.

Sec. 5.

Operation and Effect

Chapter 143, Laws of 1953 which purported to create the "Montana Legislative Council" under which all of the members of the council were also members of the legislature and which act allowed "actual traveling and other expenses incurred in the discharge of their duties, including attendance at meetings" violates this section which provides the per diem and mileage allowed each member of the legislative assembly and says that he "shall receive no other compensation, perquisite, or allowance whatsoever." State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 612.

The act creating the "Montana Legislative Council" which provided that all of the members of the council were also members of the legislature violates this section which provides that no session of the legislative assembly shall exceed sixty days. The duties of the proposed council are the same as those performed by members and committees of the regular legislative assembly during a regular 60-day session, with the exception of finally exacting proposed measures into law. Among those duties are: Examining state offices, state institutions, state funds and appropriations; receiving messages and reports from the governor and other state officials; holding public hearings and investigations; and reporting its findings and proposed legislative enactments to each succeeding regular session of the legislative assembly, on or before the tenth day of such session. The intent and purpose of the act is to permit the legislative assembly to perform duties and exercise powers, acting through but eight of its members, over a period of more than two years, which the Constitution permits only to be performed and exercised by a duly organized legislative assembly over a 60-day period. State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 613.

Sec. 7.

Operation and Effect

Chapter 143, Laws of 1953 which purported to create the "Montana Legislative Council" contravenes this section of the Constitution. State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 613.

Sec. 8.

Operation and Effect

Chapter 143, Laws of 1953 which purported to create the "Montana Legislative Council" under which all of the members

of the council were also members of the legislature and which act allowed "actual traveling and other expenses incurred in the discharge of their duties, including attendance at meetings" contravenes this section. State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 612.

Sec. 15.

References

Cited in footnote 5 in Tenney v. Brandhove, 341 U S 367, 95 L Ed 1019, 71 S Ct 783.

Sec. 23.

Operation and Effect

If Laws 1945, Ch. 142 (84-3601 to 84-3610, since repealed) should be construed as making legal the operation of slot machines by nonprofit corporations as well as providing for their licensing, it would be void as containing more than one subject. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 998.

Sec. 26.

Laws Not Violating This Provision

Sections 46-2301 to 46-2332, relating to grazing districts, do not constitute a local or special law in violation of this section. Thompson v. Tobacco Root Co-op. State Grazing Dist., 121 M 445, 193 P 2d 811, 817.

Section 52-319 relating to the requirement that mortgage lien-holders of livestock file their lien with the recorder of marks and brands in order to give notice to livestock markets does not constitute a special law in violation of this section. The classification is legitimate and reasonable and operates equally upon every person or thing in the class. Montana Meat Co. v. Missoula Livestock Auction Co., 125 M 66, 230 P 2d 955, 958.

Section 75-4601 is not violative of this provision. It is general in its application and the classification made by it is reasonable in the light of the purpose, which is limited to the construction, repair, improvement, and equipment of school buildings. Lorang v. High School Dist. "C" of Cascade County, 126 M 204, 247 P 2d 477, 479.

Operation and Effect

Chapter 143, Laws of 1953 which purported to create the "Montana Legislative Council" contravenes this section. State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 613.

Parking Meters

The installation and use of parking meters by a city is not in violation of this section of the constitution prohibiting local or special laws chartering or licensing toll roads. Glodt v. Missoula, 121 M 178, 190 P 2d 545, 548.

Special or Local Laws Forbidden

Section 84-4159 was a special law shortening the period of the statute of limitations with respect to certain persons and individuals and invalid. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 487; Ross v. First Trust & Sav. Bank, 123 M 81, 208 P 2d 490; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 506.

Laws 1949, Ch. 51 (32-1621) which authorized the expenditure of state highway funds on "All toll bridges crossing any river in the state of Montana" was a local and special law since the only bridge crossing any river in the state where tolls are collected for its use is the Great Northern Railway bridge at Snowden. Sjostrum v. State Highway Comm., 124 M 562, 228 P 2d 238.

Sec. 29.

References

Cited in the dissenting opinion in Davidson v. Love, 127 M 366, 264 P 2d 705, 708.

Sec. 31.

Construction

Where the term of office of an appointee is for a definite period of four years and for an indefinite period thereafter until his successor in office shall have been appointed and qualified, and the officer holds over because the appointment of his successor is not effective there is no violation of this section. State v. Swanberg, — M —, 299 P 2d 446, 451.

References

Cited or applied in State ex rel. Rusch v. Board of County Comrs., 121 M 162, 191 P 2d 670, 671.

Sec. 34.

Special Trust Funds

This section has no application to special or trust funds which have never been placed in the general funds of the state. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

Sec. 36.

Operation and Effect

Authority to lease park grounds of city cannot be delegated to a special park board composed of a member of city council and two members of the private club to which the ground was leased. Hames v. Polson, 123 M 469, 215 P 2d 950.

References

Cited or applied in Marchi v. Brackman, — M —, 299 P 2d 761, 765.

Sec. 39. Except as hereinafter provided, no obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

It shall however be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any personal property taxes which are not a lien on real estate and which have been delinquent for ten (10) years or more.

It shall also be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any contractual obligation owed to or held by a county, for seed grain, feed or other relief, the collection of which obligation is barred by the statute of limitations.

Compiler's Note

This constitutes sec. 39 of article V as amended by act approved March 5, 1947 (ch. 197, Laws of 1947); adopted at the general election of November 2, 1948; effective under governor's proclamation December 3, 1948. This amendment added the last two paragraphs.

References

Cited or applied in Carlson v. Flathead County, — M —, 293 P 2d 279, 283.

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 1.

Common-law Powers and Duties

The attorney general has common-law powers and duties. State ex rel. Olsen v. Public Service Commission, — M —, 283 P 2d 594, 598.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

Sec. 5.

Authority over Judiciary Restricted

Governor is not empowered to exclude or remove from office the duly elected, qualified and acting judge of a judicial district or to order the judge of another district into his district. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

Sec. 7.

Application

This section, authorizing recess appointments, has reference only to such vacancies which leave the office without anyone to discharge the duties and does not apply to a case where the incumbent holds until his successor is elected or appointed and qualified and is discharging the duties of his office. Hence an appointment to the industrial accident board on May 1, 1955

which was during a time when the senate was not in session was not effective, since it was not "by and with the consent of the senate" as required by section 92-104. The incumbent, whose term expired May 1, 1955 would continue to hold the office and discharge its duties. State v. Swanberg, — M —, 299 P 2d 446, 448.

Sec. 9. The governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of the state; Provided, however, That before granting pardons, remitting fines and forfeitures, or commuting punishments, the governor shall be advised concerning the same and that such action has been approved by a board, or a majority thereof, who shall be known as the board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof.

Compiler's Note

This constitutes sec. 9 of article VII as amended by act approved Feb. 28, 1953 (Ch. 106, Laws of 1953); adopted at the general election of November 2, 1954; effective under governor's proclamation Dec. 7, 1954. This amendment provides that the legislative assembly shall prescribe for the appointment and composition of the board of pardons and fix its powers and duties. Prior to amendment the board was composed of the secretary of state, attorney general and state auditor. For section prior to amendment, see parent volume.

References

Cited or applied in State ex rel. Biles v. District Court, 125 M 337, 238 P 2d 908.

Sec. 10.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State v. Zumwalt, — M —, 291 P 2d 257, 259.

Sec. 2.

Supervisory Control

There are no written laws promulgated or enacted by the law-making department of our government prescribing the regulations and limitations governing the issuance of so-called "writs of supervisory control." There being no such provisions, the court has attempted to make its own regulations and limitations as to when such writ may or may not issue, which regulations and limitations appear to change with each new petition for the "writ." State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

Supervisory control, invoking the original jurisdiction of the Supreme Court is not a substitute for an appeal provided by statute. Original proceedings seeking supervisory control may not be employed to by-pass the statutes allowing and requiring timely appeals to the Supreme Court. Where as here the appeal allowed by statute furnishes an adequate remedy, such remedy is exclusive and furnishes the only lawful means of review. State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 703.

Writ of Prohibition—Authority to Review Action of District Court

Refusal of court to set aside indictments on grounds set forth in section 94-6601 may be reviewed by Supreme Court on writ of prohibition. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1039.

Among the devices prescribed for the exercise by the supreme court of its power and jurisdiction to superintend and control proceedings in the district courts is the ancient writ of prohibition for which the legislature has made provision. State v. District Court of Lewis and Clark County, — M —, 295 P 2d 233, 237.

Where, during the course of a divorce proceeding, a judge disqualifies himself,

and another judge assumes jurisdiction and commits the husband to jail for contempt, on a habeas corpus petition brought by the jailed husband, the disqualified judge would not be authorized to act and a writ of prohibition will lie to prohibit such judge from proceeding further in the habeas corpus matter. State v. District Court of Lewis and Clark County, — M —, 295 P 2d 233.

References

Cited or applied in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279; State ex rel. Estes v. Justice Court of Jefferson County, — M —, 284 P 2d 249, 250; State v. Zumwalt, — M —, 291 P 2d 257, 259.

Sec. 3.

"Cases" Construed

By "cases" and "controversies" is meant real controversies and not abstract differences of opinion or moot questions. Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 584.

Writ of Prohibition

The writ of prohibition may be issued to end litigation and save expense. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052, 1054.

Supreme Court had jurisdiction to grant writ of prohibition to prevent payment of grand jury illegally in session. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

References

Cited or applied in State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765; State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279; Bond v. Birk, 126 M 250, 247 P 2d 199, 206; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704; Benolken v. Miracle, 128 M 262, 273 P 2d 667, 669; State ex rel. Estes v. Justice Court of Jefferson County, — M —, 284 P 2d 249, 250; State v. Zumwalt, — M —, 291 P 2d 257, 259; State v. District Court of Lewis and Clark County, — M —, 295 P 2d 233, 237.

Sec. 11.

Aggregation of Causes of Action

Held, that where there are several causes of action, each for less than the jurisdictional minimum for the district court, they may be prosecuted in the district court where their aggregate exceeds the jurisdictional minimum. Stokke v. Graham, — M —, 281 P 2d 1025, 1026. (See, however, the concurring opinions, — M —, 281 P 2d 1025, 1027.)

"Cases" Construed

By "cases" and "controversies" is meant real controversies and not abstract differences of opinion or moot questions. Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 584.

References

Cited in Miller v. Emerson, 120 M 380, 186 P 2d 220; Benson v. Benson, 121 M 439, 193 P 2d 827, 829; State v. Holt, 121 M 459, 194 P 2d 651, 662; State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765; Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999; Fraser v. Clark, 128 M 160, 273 P 2d 105, 114; Carlson v. Flathead County, — M —, 293 P 2d 279, 283.

Sec. 12.

References

Cited in State ex rel. Bennet v. Bonner, 123 M 414, 214 P 2d 747.

Sec. 13.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

Sec. 14.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State ex rel. Dryman v. District Court, 128 M 402, 276 P 2d 969, 970.

Sec. 15.

Jurisdiction

The supreme court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. State ex rel. Estes v. Justice Court of Jefferson County, — M —, 284 P 2d 249, 250.

Sec. 17.

Grand Jury Term

Although district court is always open and each term continues until succeeding term, the terms as fixed by the court limit the existence of the grand jury, the beginning of each term constituting a "final adjournment" of the preceding term within the meaning of section 93-6314. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

Operation and Effect

This provision excuses district courts from being open for business on legal holidays and nonjudicial days but does not purport to void any judicial act performed on a legal holiday. Miller v. Emerson, 120 M 380, 186 P 2d 220, 221.

References

Cited or applied in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State v. Saginaw, 124 M 225, 220 P 2d 1021, 1024.

Sec. 19.

Delegation of Powers to Special Assistant

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judges appointing such special prosecutor when the county attorney was present and able to act could not give such authority. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

Sec. 21.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 662.

Sec. 23.

Appeals from Justices Courts

The supreme court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. State ex rel. Estes v. Justice Court of Jefferson County, — M —, 284 P 2d 249, 250.

Operation and Effect

The right of appeal, though guaranteed under the Constitution, may be exercised only in obedience to the statutory regulations applicable. State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 698.

Sec. 26.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

Sec. 29.

References

Cited or applied in State ex rel. Estes v. Justice Court of Jefferson County, — M —, 284 P 2d 249, 250.

Sec. 34.

Vacancies

Retirement of a district judge under the provisions of sections 68-101 to 68-1313 creates a vacancy which must be filled by the governor. State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 426.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE

Sec. 2.

Electors in School Election

The fact that some electors in school bond elections pay taxes only on personal property does not disqualify them from voting at the election for the names of such electors appear on the assessment roll the same as do those of the electors who pay taxes on real estate. Habel v. High School District "C" of Cascade County, — M —, 292 P 2d 349, 351.

Objection must be Raised before Election

Under this provision, and the statutes enacted supplementing it, the objection that a measure creates a state debt, levy or liability and that therefore it should have been placed upon a separate ballot to be voted upon by taxpayers is waived if not raised before the election. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 290.

Operation and Effect

The provisions of this section relating to the qualifications of voters when the question submitted concerns the creation of a levy, debt or liability apply to laws submitted to the people under Art. XIII, sec. 2. Thomas v. Board of Examiners, 122 M 564, 207 P 2d 553, 556.

ARTICLE XI—EDUCATION

Sec. 2.

References

Cited or applied in dissenting opinion in State ex rel. Dickgraber v. Sheridan, 126 M 447, 254 P 2d 390, 403; In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1091.

Sec. 3.

References

Cited or applied in dissenting opinion in State ex rel. Dickgraber v. Sheridan, 126 M 447, 254 P 2d 390, 403.

Sec. 5.

Oil and Gas Leases

The amount bid over the minimum of 75 cents per acre as established in section 81-1703 is considered part of the rental and thus placed in the common school interest and income fund to be apportioned and distributed annually to the several school districts as provided in this section. State ex rel. Dickgraber v. Sheridan, 126 M 447, 254 P 2d 390. (See, however, dissenting opinions of Justices Anderson and Angstman in 126 M 447, 254 P 2d 390 on pages 397 and 403 respectively.)

Sec. 7.

References

Cited or applied in Rankin v. Love, 125 M 184, 232 P 2d 998, 1000.

Sec. 11.

Actions Ex Contractu against Board

The state board of education may be sued for a breach of contract without the consent of the state for the action. Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

ARTICLE XII—REVENUE AND TAXATION

Sec. 1.

Operation and Effect

The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties under sections 84-5406 and 84-5409 and hence classified as class one of 84-301 and 84-302 does not of itself contravene this section and section 11, article XII of the state constitution. New Silver Bell Min. Co. v. County of Lewis and Clark, — M —, 284 P 2d 1012, 1020. (Dissenting opinion, — M —, 284 P 2d 1012, 1021.)

Statutes Violating this Provision

Chapter 178, Laws of 1951 which amended section 84-301 is an unconstitutional exercise of the legislative function to classify property for taxation. Victor Chemical Works v. Silver Bow County, — M —, 301 P 2d 730, 737. (Dissenting opinion, — M —, 301 P 2d 730, 737.)

Unreasonable and Arbitrary Discrimination

Section 2620.45 of the Revised Codes of 1935 (3-2445) levying a tax on dealers in oleomargarine was invalid as levying a tax which resulted in unreasonable and arbitrary discrimination. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

References

Cited or applied in Victor Chemical Works v. Silver Bow County, — M —, 301 P 2d 730, 734.

Sec. 1(b). No monies paid into the state treasury which are derived from fees, excises or license taxes relating to registration, operation or use of vehicles on the public highways or to fuels used for the propulsion of such vehicles, except fees and charges paid to the board of railroad commissioners of the state of Montana and the public service commission of Montana or its successor or successors by motor carriers pursuant to law, shall be expended for other than cost of administering laws under which such monies are derived, statutory refunds and adjustments provided therein, payment of highway obligations, cost of construction, reconstruction, maintenance and repair of public highways, roads, streets, and bridges, and expenses authorized by the state legislature for dissemination of public information relating to the public highways, roads, streets and bridges of the state of Montana and the use thereof.

Compiler's Note

This constitutes sec. 1 (b) of article XII as added by act approved March 10, 1955 (Ch. 239, Laws 1955); adopted at the general election of November 6, 1956, effective under governor's proclamation December 28, 1956. This amendment added section 1 (b) to article XII of the Constitution.

Sec. 2.

Property Leased for School Purposes

Under this section, ownership of the property is of no importance. It is exempt from taxation if it is used exclusively for educational purposes. Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

A school building, built by an improvement company and leased by it to the school district, wherein the school district was to pay any tax which might be assessed and wherein the amount of the lease just covered the cost of the building, such building was exempt from taxation. Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

Purpose of Tax Exemption

The purpose of exempting from taxation property used exclusively for educational purposes was to promote and encourage the cause of education. Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

Sec. 3.

Net Proceeds

It does not matter whether the mine is operated at a profit or at a loss by the operator, so far as the royalty holder is concerned. He must pay on the royalty yielded to him whether the operator of the mine operated it at a loss or not. Nor does it matter whether the operator deducted the royalties in making up its return for the computation of its net proceeds. The taxing authorities are required to tax the lessor's net smelter returns for what they are, not for what the parties may do with them. New Silver Bell Min. Co. v. County of Lewis and Clark, — M —, 284 P 2d 1012, 1019. (Dissenting opinion, — M —, 284 P 2d 1012, 1021.)

Sec. 4.

Statutes Violating This Provision

Laws 1949, Chapter 15 providing for a six per cent sales tax on the retail selling price of liquor which tax was to be appor-

tioned to the counties according to the amount of liquor sold in each county was in violation of this section and void. Lindeen v. Liquor Control Board, 122 M 549, 207 P 2d 977.

Sec. 7.

References

Cited or applied in Victor Chemical Works v. Silver Bow County, — M —, 301 P 2d 730, 734.

Sec. 10.

Operation and Effect

The constitutional provisions relating to taxation have no application to license fees or taxes imposed for regulatory purposes as distinguished from property taxes. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 636.

This section has no application to the license tax provided for in section 1-501. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

Trust Funds

The appropriation provision of this section has no application to special or trust funds which have never been placed in the general funds of the state. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

References

Cited or applied in Carlson v. Flathead County, — M —, 293 P 2d 279, 283.

Sec. 11.

Operation and Effect

The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties under sections 84-5406 and 84-5409 and hence classified as class one of 84-301 and 84-302 does not of itself contravene this section and section 1, article XII of the state constitution. New Silver Bell Min. Co. v. County of Lewis and Clark, — M —, 284 P 2d 1012, 1020. (Dissenting opinion, — M —, 284 P 2d 1012, 1021.)

Special Assessments

This section has no application to special assessments. Bidlingmeyer v. City of Deer Lodge, 128 M 292, 274 P 2d 821, 823.

Statutes Violating the Uniformity Clause Herein

Section 2620.45 of the Revised Codes of 1935 (3-2445) levying a tax on dealers in oleomargarine was invalid as levying a tax which resulted in unreasonable and arbitrary discrimination. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

Statutes Violating this Provision

Chapter 178, Laws of 1951 which amended section 84-301 is an unconstitutional exercise of the legislative function to classify property for taxation. Victor Chemical Works v. Silver Bow County, — M —, 301 P 2d 730, 737. (Dissenting opinion, — M —, 301 P 2d 730, 737.)

Tax Not for a Public Purpose

Section 2620.45 of the Revised Codes of 1935 (3-2445) levying a tax on dealers in oleomargarine was invalid in that it levied a tax for the purpose of prohibiting in large part the sale of oleomargarine in Montana in aid of the dairy industry and not for a public or government purpose. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

References

Cited in Dickey v. Board of Comrs., 121 M 223, 191 P 2d 315, 317.

Sec. 12.

Special or Trust Funds

This section has no application to special or trust funds which have never been placed in the general funds of the state. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

Sec. 15.

In General

Boards of county commissioners have no power, authority or jurisdiction under the constitution nor statutes to reduce, compromise, remit, release, cancel, diminish or extinguish any state tax, obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined and fixed by the state board of equaliza-

tion. Carlson v. Flathead County, — M —, 293 P 2d 279, 283. (Dissenting opinion, — M —, 293 P 2d 279, 286.)

References

Cited or applied in State ex rel. Goza v. District Court, 125 M 296, 234 P 2d 463, 466.

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Contract for Use of Railroad Bridge

State highway commission is prohibited by this section from entering into contract with railroad by which it would pay to the railroad company a portion of the highway funds so that the railroad would permit vehicular travel over its railroad bridge free of toll. Sjostrum v. State Highway Comm., 124 M 562, 228 P 2d 238, 241.

Sale of Tax Lands

A statute which would permit a lessee of tax lands to purchase at the appraised value when there were higher bids would be unconstitutional as permitting a gift. State ex rel. Rich v. Garfield County, 120 M 568, 188 P 2d 1004, 1005.

Sec. 2.

Operation and Effect

This provision does not require that the legislature set a time limit on a debt; it merely requires that irrevocable and irrepealable law be passed providing for the levy of a tax sufficient to pay the interest, and extinguish the principal of the debt within the time limited by law. Where there is no specific time limited by law, and the law is made irrepealable until the debt and interest have been extinguished, the constitutional mandate has been met. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 292.

Persons Entitled to Vote

This section requiring that laws creating an indebtedness be submitted to the people is qualified by Art. IX, sec. 2 which provides that in questions concerning the creation of a levy, debt or liability the voter "must also be a taxpayer whose name appears on the last preceding completed assessment roll." Thomas v. Board of Examiners, 122 M 564, 207 P 2d 553, 556.

Sec. 6. No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 3, 1949 (ch. 193, Laws of 1949); adopted at the general election of November 7, 1950, effective under governor's proclamation December 6, 1950. This amendment raised the limitation on indebtedness from three to five per centum.

Proposed Amendment

Chapter 161, Laws of 1957 proposed an amendment to this section of the Constitution of Montana. This proposed amendment is to be submitted to the voters at the general election in November 1958. The amendment reads as follows: "Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring

of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section: provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt." Laws 1957, ch. 161, sec. 2.

Operation and Effect

Section 75-3902 was amended in 1951 to conform with this constitutional amendment and an injunction which restrains the trustees of a school district from becoming indebted to more than the 3% constitutional limit of the value of the taxable property becomes inoperative on July 1, 1951 which is the effective date that section 75-3902 as amended by Ch. 65, Laws 1951 becomes law raising the limit to 5% of the value of the taxable property. Rankin v. Love, 125 M 184, 232 P 2d 998, 1002.

Overlapping School Districts

Rankin v. Love, 125 M 184, 232 P 2d 998 at page 1001 overruled House v. School Dist. No. 4 of Park County, 120 M 319, 184 P 2d 285, which had held that each school district can contract indebtedness up to the constitutional limit notwithstanding the fact that the territory of one district may be embraced wholly or in part within the area of the other.

Where a high school district is created which overlaps the common school districts, such high school district can incur indebtedness so long as such indebtedness when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part added to the existing indebtedness of the common school districts respectively did not bring the debt of any of the latter in excess of the limit prescribed by this section. Wright v. Browning High School District, 125 M 495, 240 P 2d 862, 863.

Special Improvement District Bonds

Where town issued bonds under provisions of Revised Codes 1921, sec. 5226 (11-2202), providing for the creation of special improvement districts, the bonds were payable from the special improvement district fund and town could not be compelled to pay them from the water fund. State ex rel. Truax v. Lima, 121 M 152, 192 P 2d 1008, 1010.

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 10.

References

Cited or applied in Bull Creek Oil & Gas Development v. Bethel, 127 M 222, 258 P 2d 960, 964.

Sec. 11.

References

Cited in Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325, 327.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

Sec. 5.

References

Cited in Lindeen v. Liquor Control Board, 122 M 549, 207 P 2d 977.

ARTICLE XVII—PUBLIC LANDS

Sec. 1.

Lands Include Mineral Rights

The word "lands" include mineral rights although this section has no mineral classification. Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 454.

Operation and Effect

H.B. 229, Laws of Montana 1953, pp. 651, 652 insofar as it permits the armory board to convey the Poplar armory, and land upon which it is situated, to the city of Poplar, is unconstitutional as it violates Art. 17, sec. 1 of the Montana Constitu-

tion. The armory board is part and parcel of the government of the state and in acquiring land and armories it acted for and took title thereto as an arm and agency of the state. State ex rel. Olsen v. Montana Armory Board, 128 M 344, 275 P 2d 652, 655. (Dissenting opinion, 128 M 344, 275 P 2d 652, 655.)

References

Cited in State ex rel. Robbins v. Bonner, 128 M 45, 270 P 2d 400, 403.

ARTICLE XVIII—LABOR

Section 1. The legislative assembly shall provide for a department of agriculture, and a separate department of labor and industry to be located at the capitol and each of said departments shall be under the control of a separate commissioner who shall be appointed by the governor, subject to the confirmation of the senate. Each commissioner shall hold office for four (4) years, and until his successor is appointed and qualified; the compensation of each commissioner shall be as provided by law. The powers and duties of each commissioner shall be prescribed by the legislature.

Compiler's Note

This constitutes sec. 1 of article XVIII as amended by act approved February 3, 1949 (Ch. 6, Laws of 1949); adopted at the general election of November 7, 1950, effective under governor's proclamation December 6, 1950. This amendment created a separate department of agriculture and department of labor and industry in place of the bureau of agriculture, labor and industry.

References

Cited or applied in State v. Swanberg, — M —, 299 P 2d 446, 453.

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 1.

Operation and Effect

Chapter 143, Laws of 1953 which purported to create the "Montana Legislative Council" under which all of the members of the council were members of the legislature and which council was permitted to accept grants or gifts of money from any person or corporation is in direct conflict with and violative of the constitutional oath required by this section. State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611, 612.

Sec. 2.

Raising Question of Violation

Question whether a law authorizing the licensing of slot machines is in violation of this section cannot be raised by a "citizen and tax payer" in an action under the Declaratory Judgment Act. Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 583.

Statutes Violating This Provision

Section 94-2401 et seq. and 84-5701 et seq. (since repealed) authorizing and licensing trade stimulators such as punch boards is violative of this provision. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141.

Chapter 201 of Laws 1951 (84-5703 to 84-5717) is unconstitutional as an attempt to authorize lotteries. State v. Tursich, 127 M 504, 267 P 2d 641, 642.

References

Cited in State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Sec. 5.

Hotel

The erection and maintenance of a hotel as a memorial to executrix was not a charitable purpose and therefore such provision in will was not exempt from the rule against perpetuities. In re Swayze's Estate, 120 M 546, 191 P 2d 322, 327.

ARTICLE XX—SCHEDULE

Sec. 1.

References

Cited in Annala v. McLeod, 122 M 498, 206 P 2d 811, 813.

MONTANA REVISED CODES

TITLE 1—AERONAUTICS

Chapter 5. Miscellaneous, 1-501.
6. Uniform state law for aeronautics, 1-603.

CHAPTER 1—STATE AERONAUTICAL REGULATORY ACT—DEFINITIONS—POLICY

1-101. Act, how cited.

Nature of Law

This law is a regulatory measure. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 637.

CHAPTER 3—REGULATION AND LICENSES

1-301. Regulation of aircraft, airmen, airports and air instruction.

Nature of Tax

This tax is a regulatory measure and the tax levied is a license tax. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 637.

Liability of operator of flight training school for injury or death of trainee. 17 ALR 2d 557.

Duty and liability to guest or passenger as to preflight inspection and maintenance of air craft. 30 ALR 2d 1172.

CHAPTER 5—MISCELLANEOUS

Section 1-501. State aviation fund.

1-501. State aviation fund. Creation of state aviation fund—All costs and expenses of administering this act, including the salaries of employees and assistants provided for in section 6 [1-203] hereof, the expenses of members of the commission, and all other disbursements necessary to carry out the purposes of this act, shall be paid out of the state aviation fund hereby created.

The state aviation fund shall be made up of the following revenues to-wit: All gifts and all legislative appropriations for said fund; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this act or for the furtherance of aeronautics generally in this state.

There shall also be paid into said fund the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax now or hereafter imposed by the laws of Montana upon purchases of gasoline used for the operation of aircraft.

The revenue from said one cent (1¢) per gallon of said tax shall no longer be placed in either the state highway fund or the gasoline license drawback fund as now required by section 2381.22, Revised Codes of Montana of 1935 [84-1812], as amended, but the same shall, when received by the state treasurer, be placed in the state aviation fund.

No part of said one cent (1¢) per gallon of gasoline license tax imposed by the laws of Montana on gasoline purchased and used for the operation of aeroplanes or aircraft, shall be subject to refund under the provisions of section 2396.4, Revised Codes of Montana, 1935 [84-1818], as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 2396.4 [84-1818].

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949.

Amendment

The 1949 amendment substituted the words "the amount per gallon of gasoline license tax now or hereafter" for "each five cents per gallon license tax now" in the third paragraph and substituted "by one cent (1c) per gallon of" for "from five to four cents per gallon" in the last paragraph.

Repealing Clause

Section 2 of Ch. 120, L. 1949 repealed all acts and parts of acts in conflict therewith.

Appropriation

The appropriation made by Laws 1947, p. 761 from the gasoline drawback fund was an appropriation of the one cent gasoline tax for payment of the expenses of the commission. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 640.

Federal funds and other moneys derived otherwise than by taxation never reach the general fund of the state treasury and hence require no legislative appropriation other than that made by subd. (d) of section 1-205. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 636.

Constitutionality

Article 12, sec. 10 of the state constitution has no application to the license tax provided for in this act and therefore it is not necessary that the proceeds of the one cent gasoline tax be paid into the state treasury as part of the general fund but it was competent for the legislature to provide that it be kept as a separate fund. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

Operation and Effect

The practical operation of this act is to levy a one cent per gallon tax on the user of gasoline for aviation purposes and it is used to regulate the aviation operators, and therefore is not a revenue measure and not subject to the constitutional provisions relating to taxation. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 637.

The amendment of section 84-1818 by Laws 1947, Ch. 130 had no effect on this section. State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 641.

CHAPTER 6—UNIFORM STATE LAW FOR AERONAUTICS

Section 1-603. Lawfulness of flight—landings—recovery of damages.

1-603. Lawfulness of flight—landings—recovery of damages. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. No person shall operate an aircraft in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein. The wilful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the

penalties, provided by this act, may be recovered in an action for damages caused therefrom.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

History: En. Sec. 7, Ch. 17, L. 1929; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949.

Amendment

The 1949 amendment added the second sentence and substituted "or the pilot" for "if the pilot" in the last paragraph.

Repealing Clause

Section 2 of Ch. 16, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 16, L. 1949 provided the act should take effect from and after its passage and approval. Approved February 4, 1949.

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

1-804. (5668.38) Tax levy for establishment and operation, etc.

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 711.

1-816. Appropriations and taxation.

References

Cited or applied in State v. Hale, — M —, 291 P 2d 229, 235.

1-818. Federal and state aid.

References

Cited or applied in State v. Hale, — M —, 291 P 2d 229, 235.

1-822. Public purpose, county and municipal purpose.

References

Cited or applied in State v. Hale, 126 M 326, 249 P 2d 495; State v. Hale, — M —, 291 P 2d 229, 235.

TITLE 2—AGENCY

CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

2-101. (7928) Agency defined.

Insurance Adjuster as Agent of Vehicle Owner

Where after automobile collision plaintiff wrote to owner of other vehicle respecting damage to his automobile and was referred to adjuster of insurance company, and after meeting with adjuster such adjuster agreed to pay a certain sum as damages, which sum was never paid, owner of such other vehicle was liable on such agreement in suit brought by plaintiff. Selby v. Victoria Mines, Inc., 124 M 321, 221 P 2d 423.

Rights of parties under oral agreement to buy or bid in land for another. 27 ALR 2d 1285.

2-105. (7932) Actual Agency.

References

Cited or applied in Hempstead v. Allen, 126 M 578, 255 P 2d 342, 344.

2-106. (7933) Ostensible agency.

Burden of Proof

Where plaintiff in his complaint contended that there was a partnership he assumed the burden of establishing that there was one in fact, or that the partners had permitted themselves to be represented as such to him and that on the faith of such representations, he had given the credit to the partnership. Hempstead v. Allen, 126 M 578, 255 P 2d 342, 344.

References

Cited or applied in State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Principal and Agent⇐99.

2 C.J.S. Agency § 99.

Apparent or ostensible authority of corporate agent to hire employees for life. 28 ALR 2d 935.

2-115. (7938) Consideration unnecessary.

Consent Necessary.

Agency is founded upon consent not consideration. State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

2-116. (7939) Form of authority.

References

Cited or applied in State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Agent's authority to agree contemporaneously with sale to repurchase or resell or for return of personal property. 34 ALR 2d 510.

Authority of agent to indorse and transfer commercial paper. 37 ALR 2d 453.

2-117. (7940) Ratification of agent's act.

Operation and Effect

A conviction may be had of the owner of a tavern for the sale of beer to a minor although such sale was made by a barmaid who was not on the defendant's payroll but acted at times as bartender when the manager was gone. The owner by her silence and by accepting and retaining the benefits of the sales by the barmaid whom she knew was acting as a substitute bartender for her manager did ratify said acts. State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Ratification by principal of payment of purchase money to agent authorized to sell real property. 30 ALR 2d 805.

Ratification by principal's acceptance of payment of purchase to agent authorized to sell real property. 30 ALR 2d 824.

Ratification of agent's unauthorized agreement contemporaneously with sale to repurchase or resell or for return of personal property. 34 ALR 2d 524.

2-124. (7947) Ostensible authority defined.

References

Cited or applied in State v. Erlandson, 126 M 316, 249 P 2d 794, 798.

Principal and Agent⇨99.
2 C.J.S. Agency § 99.
Apparent or ostensible authority of corporate agent to hire employees for life. 28 ALR 2d 935.

CHAPTER 2—MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

2-209. (7965) Principal's responsibility for agent's negligence or omission.

Operation and Effect

United States was not liable for damages occasioned by the negligent driving by an army driver, where such driver, in disobedience of his orders, went out of his way, to a tavern where he drank, and then while driving an army vehicle back to base became involved in an accident. The deviation from the masters business and orders was so great as to show that the driver was on his own mission. St. Paul Fire & Marine Ins. Co. v. United States, 116 F Supp 51, 53.

CHAPTER 3—DELEGATION AND TERMINATION OF AGENCY

2-305. (7975) Same—where coupled with an interest.

Power Not Coupled with Interest

Power of attorney authorizing physician to perform all future medical services for decedent for which he was to receive $2,000 was not a power coupled with an interest and terminated upon death of decedent. Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 595.

Principal and Agent⇨29½.
2 C.J.S. Agency § 70.
What constitutes power coupled with interest within rule as to termination of agency. 28 ALR 2d 1243.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

Chapter 1. Department and commissioner of agriculture, labor and industry—creation and general powers, 3-101.1, 3-103, 3-109, 3-109.1.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-202, 3-205, 3-208, 3-214, 3-233.
3. Seed warehousemen—licensing, 3-301, 3-302, 3-306.
8. Agricultural seeds, 3-801, 3-802, 3-805, 3-807, 3-809 to 3-815.
17. Commercial fertilizer—regulation of sale, 3-1705, 3-1712 to 3-1728.
19. Mustard seed—grade requirements—purchaser's bond and license, 3-1901, 3-1903.
20. Commercial feeds—regulation, 3-2001, 3-2002, 3-2004, 3-2006.
22. Poultry—Montana poultry improvement board, 3-2201, 3-2204, 3-2205, 3-2209, 3-2212.
23. Eggs and egg dealers—license, 3-2312, 3-2313.
24. Dairies and dairy products—regulation of production and sale, 3-2416, 3-2437, 3-2443, 3-2476 to 3-2487.
26. Grasshopper eradication and control, 3-2601 to 3-2606.
27. Control of noxious rodent pests, 3-2701 to 3-2704.
28. Rural rehabilitation, 3-2801 to 3-2805.

CHAPTER 1—DEPARTMENT AND COMMISSIONER OF AGRICULTURE, LABOR AND INDUSTRY—CREATION AND GENERAL POWERS

Section 3-101.1. Separation of department of agriculture and department of labor and industry.
3-103. Bond, salary, and office of commissioner.
3-109. "Divisions" defined.
3-109.1. Horticultural inspection and quarantine service.

3-101. (3555) Department of agriculture, labor and industry—creation.

Compiler's Note

The title of the commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-101.1. Separation of department of agriculture and department of labor and industry. In order to carry out the constitutional mandate in section 1 of Article XVIII of the Montana Constitution that there shall be separate departments of agriculture and of labor and industry which shall be under control of separate commissioners, and in order to prevent confusion in the designation of the commissioners in charge of the separate departments, (a) the title "commissioner of agriculture, labor and industry" in the following sections of the Revised Codes of Montana of 1947, refers to the commissioner of agriculture: Sections 3-101, 3-102, 3-107, 3-108, 3-110, 3-115, 3-402, 3-502, 3-509, 3-601, 3-805, 3-1101, 3-1801, 3-1805, 3-1906, 3-2003, 3-2010, 3-2104, 3-2106, 3-2401, 3-2402, 3-2403, 3-2404, 3-2413, 3-2418, 3-2456, 3-2457, 3-2459, 3-2460, 3-2471, 66-1901, 84-3006, 84-3008, 84-3011 and in sections 6, 8, 9, 10, 14, 15, 16, 17 and 19 of Chapter 138, Laws of Montana, 1949 [27-506, 27-508, 27-509, 27-510, 27-514, 27-515, 27-516, 27-517, 27-519]; and (b) the title "commissioner of agriculture, labor and industry" and the title "commissioner of agriculture" as used in the following sections refers to the "commissioner of labor and industry" created by this act: Sections 3-1502, 3-1503, 3-1504, 41-1201, 41-1202, 92-104.

History: En. Sec. 6, Ch. 177, L. 1951.

Compiler's Note

Sections 5 and 7 of Ch. 177, Laws 1951 are compiled as secs. 41-1605, 3-109 respectively.

States⇐45.
81 C.J.S. States § 66.

3-102. (3556) **Commissioner of agriculture—appointment and term.**

Compiler's Note

The title of the commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-103. (3557) **Bond, salary, and office of commissioner.** Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office, and shall give a surety company bond in the sum of seven thousand dollars ($7,000), conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall receive an annual salary of seven thousand dollars ($7,000), payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at that [the] state capitol.

History: En. Sec. 3, Ch. 216, L. 1921; re-en. Sec. 3557, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1953.

Compiler's Note

The bracketed word "the" was inserted by the compiler.

Amendment

The 1953 amendment raised the amount of surety bond required from $5,000 to $7,000 and the compensation of the commissioner from $5,000 to $7,000.

Repealing Clause

Section 2 of Ch. 110, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 110, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

3-104. (3558) **Commissioner may prescribe regulations—seal.**

Cross-Reference

Oleomargarine, duties with respect to, secs. 27-501 to 27-520.

3-107. (3561) **Powers and duties of department.**

Compiler's Note

The title of the commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-108. (3562) **Organization of divisions.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-109. (3563) **"Divisions" defined.** There shall be three main divisions of the department of agriculture, towit:

"The division of farming and dairying."

"The division of grain standards and marketing."

"The division of horticulture."

The divisions hereby created are intended for the sole purpose of promoting the logical and convenient classification of the work of the department, and nothing herein contained shall be deemed to prevent any person engaged in the work of a particular division from performing the work

of another division; the commissioner may likewise create additional divisions at his discretion.

History: En. Sec. 9, Ch. 216, L. 1921; re-en. Sec. 3563, R. C. M. 1921; amd. Sec. 7, Ch. 177, L. 1951.

Compiler's Note

Sections 6 and 8 of Ch. 177, Laws 1951 are compiled as secs. 3-101.1, 41-1606 respectively.

Amendment

The 1951 amendment reduced the number of main divisions from "four" to "three" omitting the division of labor and publicity and substituted "department of agriculture" for "department of agriculture, labor and industry."

3-109.1. Horticultural inspection and quarantine service. That the division of the department of agriculture heretofore referred to and usually known and designated as the "division of horticulture" shall hereafter be known and designated as the "horticultural inspection and quarantine service," and wherever the term "division of horticulture" may appear or be used in any section of the Revised Codes of Montana, 1947, or any act amendatory thereof or supplemental thereto, it shall be deemed and construed to refer to and mean the "horticultural inspection and quarantine service"; provided, that such change in name shall not be construed so as to, in any manner whatever, impair or work a forfeiture of any property or rights of such division, or of the state of Montana.

History: En. Sec. 1, Ch. 97, L. 1953.

Title of Act

An act to provide that the division of the department of agriculture known as the division of horticulture shall hereafter be known and designated as the horticultural inspection and quarantine service.

Repealing Clause

Section 2 of Ch. 97, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 97, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 25, 1953.

3-110. (3564) **Regulation of farming industry and allied subjects.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

References

Cited or applied in Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1085.

3-115. (3573) **The division of grain standards and marketing.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—REGULATION OF GRAIN WAREHOUSEMEN

Section 3-202. Fees to be paid to state sealer of weights and measures.
3-205. Inspectors of grain—samplers and weighers—qualifications—interest—bonds.
3-208. Charges of public warehousemen.
3-214. Records of weighing and grading, certificate.
3-233. Fees—disposition—department of agriculture grain services' revolving fund—use.

3-202. (3575.2) **Fees to be paid to state sealer of weights and measures.** It shall be the duty of each person, firm, co-partnership, or corporation owning or in possession of a scale or scales to pay to the state sealer

of weights and measures or his deputies at the time of each inspection of such scale or scales, the following inspection fees: For each railroad track scale the sum of fifteen ($15.00) dollars; grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, twenty-five ($25.00) dollars; wagon scale, truck scale, coal scale, dump scale, automatic or hopper shipping scale, beet scale, and stock scale, up to and including ten (10) ton capacity, eight ($8.00) dollars, over ten (10) ton up to and including twenty (20) ton capacity, twelve ($12.00) dollars, two-section scale with a capacity over twenty (20) ton, twenty ($20.00) dollars; three (3) or more section twenty (20) ton and over capacity, twenty-five ($25.00) dollars; for each dormant platform scale up to thirty-five hundred (3500) pounds, meat track scale and dial scale with a capacity of five hundred (500) pounds to one thousand (1,000) pounds, two ($2.00) dollars; built-in warehouse scales with a capacity from thirty-five hundred (3500) pounds to ten thousand (10,000) pounds capacity, five ($5.00) dollars each portable scale, hanging scale and commercial person weighing scale, two ($2.00) dollars; grain testers and other small scales used for weighing and testing grain in grain elevators, or warehouses, fifty (50¢) cents; all counter scales with a capacity of one (1) to ten (10) pounds, fifty (50¢) cents; all counter scales with a capacity of over ten (10) pounds, one dollar and twenty-five cents ($1.25).

Where fees are not paid within thirty (30) days after inspection, there shall be an added charge of fifty per cent (50%) of the inspection fee and the equipment will be sealed and removed from service by the sealer of weights and measures or his deputies, until such fees have been paid.

Anyone found using a weighing device or petroleum measuring device or removing the said seal before all inspection fees have been paid, shall upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

The sealer of weights and measures, shall by proper regulation, fix inspection fees for any scales, weights, measures, weighing and computing devices and for special services not covered by the foregoing schedule of fees.

History: En. Sec. 2, Ch. 124, L. 1927; amd. Sec. 2, Ch. 31, L. 1933; amd. Sec. 2, Ch. 146, L. 1939; amd. Sec. 1, Ch. 109, L. 1945; amd. Sec. 1, Ch. 163, L. 1947; amd. Sec. 1, Ch. 89, L. 1953; amd. Sec. 1, Ch. 85, L. 1957.

Amendments

The 1953 amendment inserted the word "each" after the words "at the time of" in the first sentence; raised the inspection fee for railroad track scales from $10.00 to $12.50, grain shipping hopper scale from $20.00 to $25.00, wagon scale, truck scale, etc. from $5.00 to $8.00; substituted "over ten (10)" for the words "from fifteen (15)" which follows the words "eight ($8.00) dollars"; raised the fee for such scales up to and including thirty tons from $8.00 to $12.00; substituted the words "two-section thirty (30) ton or over capacity, twenty ($20.00) dollars" for the words "forty (40) ton capacity and over, fifteen ($15.00) dollars"; added the words "three (3) or more section thirty (30) ton or over capacity, twenty-five ($25.00) dollars"; inserted the words "meat track scale" after the words "dormant platform scale"; raised the fee for counter scales with a capacity of 1 to 10 pounds from 25c to 50c, for counter scales with capacity over 10 pounds from 75c to $1.25, and inserted the words "and for special services" near the end of the section.

The 1957 amendment raised the inspection fee for railroad track scales from $12.50 to $15.00; substituted "twenty (20) ton capacity" for "thirty (30) ton capacity" which appears before "twelve $12.00 dollars"; substituted "two-section scale

with a capacity over twenty (20) ton" for "two-section thirty (30) ton or over capacity" which appears before "twenty ($20.00) dollars"; substituted "twenty (20) ton and over capacity" for "thirty (30) ton or over capacity" which appears before "twenty-five ($25.00) dollars"; inserted "up to thirty-five hundred (3500) pounds" after "dormant platform scale"; added the words "built-in warehouse scales with a capacity from thirty-five hundred (3500) pounds to ten thousand (10,000) pounds capacity, five ($5.00) dollars"; raised the fee of portable scale, hanging scale and commercial person weighing scale from $1.00 to $2.00, and added the second and third paragraphs.

Repealing Clause

Section 2 of Ch. 85, Laws 1957 repealed all acts and parts of acts in conflict therewith.

3-205. (3576) **Inspectors of grain—samplers and weighers—qualifications—interest—bonds.** The commissioner of agriculture shall appoint a chief inspector of grain for the state, who shall also serve as chief weigher of grain for the state, and such number of inspectors, samplers and weighers as may be necessary to properly and thoroughly enforce the provisions of this act. At all inspection points designated by the commissioner he shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection, under the supervision of the chief inspector; provided, however, that grain held in transit for inspection and diversion only, need not be weighed. Such chief inspector and inspectors shall be able to qualify under the terms and in accordance with the United States federal grain standards act. The chief inspector, inspectors and weighers shall each give bond, to be approved by the commissioner, to the state in the sum of five thousand dollars, ($5,000.00) conditioned for faithful discharge of his duties. No chief inspector, inspector, sampler or weigher shall be interested directly or indirectly in the handling, sorting, shipping, purchasing or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R. C. M. 1921; amd. Sec. 2, Ch. 154, L. 1929; amd. Sec. 1, Ch. 7, L. 1957.

Amendment

The 1957 amendment inserted the words "who shall also serve as chief weigher of grain for the state" in the first sentence; added the second sentence; inserted the words "chief inspector and" between the words "Such" and "inspectors" in the third sentence, and added the fourth sentence by changing a semicolon to a period which appeared after the word "act" at the end of the third sentence.

3-208. (3579) **Charges of public warehousemen.** Charges must be made by all public warehousemen subject to the provisions of this act, for the handling or storage of grain, as follows:

(a) Not to exceed four cents (4¢) per bushel for receiving, elevating, weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery shall mean that the total period of assemblage and delivery does not exceed seventy-two (72) hours.

(b) Four cents (4¢) per bushel for all grains except flax, for receiving, grading, weighing, elevating, insuring, fifteen (15) days or part thereof free storage, and delivering to the owner. For flax this charge shall be five cents (5¢) per bushel.

(c) Not to exceed five cents (5¢) per bushel for cleaning grain at request of owner where there are cleaning facilities, in which case screenings shall be delivered to owner.

(d) The charges for storage shall be: one-thirtieth of one cent per bushel for each day in storage after period of free storage has elapsed.

(e) Twenty-five per cent (25%) reduction from the above charges shall be allowed when the market price of wheat being sold at point of origin at time of sale is less than fifty cents (50¢) per bushel.

(f) The schedule of charges for cleaning shall be posted in a conspicuous place where grain is unloaded for cleaning.

Failure on the part of any public warehouseman to comply with the provisions of this act will render the licenses of such warehouseman subject to revocation and cancellation by the commissioner of agriculture.

History: En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R. C. M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933; amd. Sec. 1, Ch. 6, L. 1957.

Amendment

The 1957 amendment substituted subd. (a) above for one which formerly read "(a) Two cents per bushel for receiving, elevating, weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery—not less than forty-eight hours but where conditions permit, special bin assemblage of grain without loss of identity for carload shipment shall be construed as immediate delivery, provided total period of assemblage and delivery does not exceed seventy-two hours. Provided in case said period is from seventy-two hours to one hundred and six hours, the entire charge shall be two and one-half cents per bushel, and from one hundred and six to one hundred and thirty hours, the charge shall be three cents per bushel. This rate for immediate delivery applies to all grain so delivered"; in subd. (c) substituted "Not to exceed five cents (5c)" for "Two cents"; in subd. (d) deleted the words "per day" which appeared after the words "one cent" and added subd. (f).

Repealing Clause

Section 2 of Ch. 6, Laws 1957 repealed all acts and parts of acts in conflict therewith.

3-213. (3581) **Fees for inspection and weighing grain.**

Cross-Reference

Fees, disposition, use, sec. 3-233.

3-214. (3582) **Records of weighing and grading, certificate.** The inspectors, samplers and weighers shall, at places provided for state inspection, have exclusive control of the weighing and grading of grain to be inspected, and the certificates of such officers relative to such weighing and grading, shall be conclusive upon all parties interested. Suitable books and records shall be kept, in which shall be entered a faithful and true record of every carload or truckload of grain inspected or weighed by them, and showing the number of and initial or other designation of the car or truck contraining such load, its weight, the kind of grain and its grade, and if graded below standard No. 1 grade, the reason for such grade, the amount of dockage, the amount of fees and forfeitures and disposition of the same. For each car or truckload of grain the inspector shall give a certificate of inspection, showing the kind and grade of the same and the reason for all grades below No. 1, and the amount to be allowed for dockage, if any. For each car or truckload weighed the weigher shall give a weight certificate showing the true weight thereof, and containing a statement showing the condition of the car or truck and evidences of leakage or damage, if any. Such inspection and weight certificates shall be made available to the warehouse loading or unloading the grain, the shipper or his agent, and the railroad company, or other carrier over which the grain was shipped or carried; provided, however, that nothing in this section shall be construed to require grading or weighing by state inspectors and weighers of local deliveries of grain in trucks by the producers thereof. Inspectors and weighers shall also keep a true

record of all appeals, decisions, and a complete record of every official act, which books and records shall be open to inspection by any party in interest.

History: En. Sec. 28, Ch. 216, L. 1921; re-en. Sec. 3582, R. C. M. 1921; amd. Sec. 2, Ch. 7, L. 1957.

Amendment

The 1957 amendment in the second sentence inserted "or truckload" between the words "carload" and "of", substituted "car or truck containing such load" for "car containing such carload," deleted the words "if of inferior grade" which appeared after the words "the reason for such grade," deleted the word "such" which appeared before the word "dockage", started a new sentence beginning with the words "For each" by deleting a comma and the word "and" which appeared after the words "disposition of the same"; in the third sentence inserted the words "or truckload" after "car" "the inspector" after "grain" and "and" after "No. 1"; substituted the fourth sentence for one which formerly read "They shall also furnish the agent of the railroad company, or other carrier over which such commodity was shipped or carried, a certificate showing the weight thereof, if requested to do so" and in the fifth sentence substituted the words "Inspectors and weighers" for the word "They."

Repealing Clause

Section 3 of Ch. 7, Laws 1957 repealed all acts and parts of acts in conflct therewith.

3-218. (3586) **Duty of warehousemen to receive grain, etc.**

Judicial Notice

The law presumes that the commissioner of agriculture performed his official duty as required by this section and that the form of warehouse receipt used and issued by plaintiff is in the form prescribed by law and the rules and regulations of the commissioner of agriculture of which law and official acts this court may take judicial notice. Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1085.

3-223. Date of termination of storage contracts, etc.

Mustard Seed as Grain

Mustard seed is a grain and subject to the provisions of this section and section 3-224. Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1085.

3-224. Termination of storage contract—sale of grain for charges.

References

Cited or applied in Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1085.

3-233. Fees—disposition—department of agriculture grain services' revolving fund—use. All fees and other charges authorized by law to be fixed by the commissioner of agriculture for the inspection, grading, weighing and protein-testing of grain shall be by said commissioner kept as near the actual cost of such services as is possible. All such fees and charges shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in a fund to be known as "The Department of Agriculture Grain Services' Revolving Fund." The state auditor is authorized to draw warrants upon such fund to pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved by the state board of examiners. The commissioner of agriculture shall submit to the legislature a budget under the grain services' revolving fund showing the salaries, wages and other expenses incidental to the operation of the grain testing laboratories. No funds of the state shall be used by the commissioner in carrying out such services, except monies presently appropriated.

History: En. Sec. 1, Ch. 203, L. 1957.

Title of Act

An act to provide for a department of agriculture grain services' revolving fund in the office of the state treasurer, derived from ninety-five per cent (95%) of all fees and charges paid to the commissioner of agriculture for inspecting, grading, weighing and protein-testing of grain, with warrants to be drawn on such fund for the payment of all expenses incurred in performing such services and with the balance of such fees and charges to be paid into the general fund; providing that fees and charges for such services be kept as near the actual cost thereof as possible; providing that no state funds shall be used for such services; repealing all acts and parts of acts in conflict herewith; and prescribing when this act takes effect.

Repealing Clause

Section 2 of Ch. 203, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 203, Laws 1957 provided the act should be in full force and effect from and after April 1, 1957.

CHAPTER 3—SEED WAREHOUSEMEN—LICENSING

Section 3-301. Citation of act—definitions.
3-302. License fee of seed warehousemen—bond—exception.
3-306. Rules and regulations may be made by commissioner of agriculture—inspections—reports—form of warehouse receipts.

3-301. (3592.1) **Citation of act—definitions.** This act and the act amended hereby may be referred to and cited as the "Act Regulating Public Warehouses For, and Buyers of Agricultural Seeds." In this act, the terms and expressions hereinafter listed shall be given the meaning assigned to them, as follows:

(a) "Agent," "broker" and "commission man" shall be held to mean and include any person, firm, copartnership or association who engages in the business of negotiating sales or contracts for agricultural seeds or of making sales or purchases of agricultural seeds for a commission;

(b) "Agricultural seeds" shall mean and include the seeds of red clover, white clover, alsike, alfalfa, Kentucky blue grass, timothy, brome grass, orchard grass, redtop, meadow fescue, oatgrass, ryegrass and other grasses and forage plants, corn, rape, buckwheat, beans, peas and registered or certified seed grains in bags;

(c) "Commissioner" shall mean the commissioner of agriculture of the state of Montana;

(d) "Public warehouse," "public warehouse for agricultural seeds" or "public agricultural seed warehouse" shall mean and include any warehouse or structure in which "agricultural seed" is received from the public for storage, assembling or cleaning;

(e) "Seed buyer" shall be held to mean and include any person, firm, copartnership, corporation or association engaged in the business of buying uncleaned agricultural seed for shipment, cleaning, processing or for resale and who does not own, control or operate a public agricultural seed warehouse;

(f) "Warehouseman" shall be held to mean and include any person, firm, copartnership, corporation or association owning, controlling or operating a public agricultural seed warehouse.

History: En. Sec. 1, Ch. 50, L. 1927; amd. Sec. 1, Ch. 158, L. 1951.

Amendment

The 1951 amendment changed the sub-

ject-matter of this section. Prior to amendment it related to the license fees for seed warehouses. For present section containing this subject-matter, see sec. 3-302.

3-302. (3592.2) **License fee of seed warehousemen—bond—exception.** Every person, firm, copartnership, corporation or association engaging in the business of agricultural seed warehouseman or holding out to the public as receiving agricultural seeds for storage, or operating any warehouse wherein is received agricultural seeds for storage, at request of members of the public, and every seed buyer, agent, broker or commission man, or buyers on commission, engaging in the merchandising of uncleaned agricultural seed in the state of Montana, shall, on or before the first day of July of each year pay to the treasurer of the state of Montana a license fee in the sum of fifteen dollars ($15.00) for each and every warehouse or other place of business where agricultural seed is received for purchase, storage or shipment and shall also, on or before such date, file with the commissioner of agriculture a good and sufficient bond to the state of Montana in such sum and in such form as the commissioner may require conditioned upon the faithful performance of the acts and duties enjoined upon any such person, firm, copartnership, corporation or association by law. The commissioner may from time to time require additional bond when in his judgment the volume of business of the licensee so requires, under penalty of revoking the license. All licenses shall expire on June thirtieth of the year following the year of issuance. Nothing in this section shall apply to a bona fide grower hauling or assembling agricultural seed of his own production, for sale, storage, cleaning, processing or shipment.

History: En. Sec. 2, Ch. 50, L. 1927; amd. Sec. 2, Ch. 158, L. 1951.

Amendment

The 1951 amendment combined in this section the provisions relating to license fees formerly found in sec. 3-301 with the bond provisions of this section, adding the provisions relating to additional bond and the exception in the last sentence.

3-306. (3592.6) **Rules and regulations may be made by commissioner of agriculture—inspections—reports—form of warehouse receipts.** The commissioner of agriculture shall prescribe such rules and regulations, within the limitations of this act, as may be necessary and proper to facilitate the administration thereof, and to insure its application to all persons, firms, copartnerships and corporations subject to its provisions, and for the proper and safe conduct of the business regulated by this act, in the public interest. The commissioner is hereby invested with authority to make such inspections of seed warehouses or other places for storage of seed, or for handling the same by licensees hereunder, and of the facilities employed or used in carrying on the businesses referred to herein, and of agricultural seeds, uncleaned or cleaned, and the containers thereof, and such other inspections, and to take samples of such seeds, as he deems necessary in carrying out this act, and applying and enforcing the same. The commissioner may require periodic or special reports from said warehousemen, buyers, brokers, commission buyers or agents on forms that may be prescribed by him, in aid of the administration of this act. The commissioner shall prescribe the form and contents of warehouse receipts which shall be issued and delivered by warehousemen or seed buyers to the owner of agricultural seeds, or to the owner's representative, upon

transfer or receipt of such seed, and no other forms of warehouse receipt shall be issued and delivered by licensees under this act.

History: En. Sec. 6, Ch. 50, L. 1927; amd. Sec. 3, Ch. 158, L. 1951.

Amendment

The 1951 amendment entirely revised the wording of this section, inserting the provisions granting the right to make inspections and omitting a provision that the receipt should indicate whether the seed is fancy, good, fair or poor.

Repealing Clause

Section 4 of Ch. 158, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 158, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT—INSPECTION AND CERTIFICATION

3-402. (3592.11) Farm storage commissioner.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 5—PROTEIN TESTING OF GRAIN

3-502. (3592.32) Administration of act.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-509. (3592.39) Form and contents of protein certificate.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-510. (3592.40) Fees for protein tests—disposal of proceeds.

Cross-Reference

Fees, disposition, use, sec. 3-233.

CHAPTER 6—FARM STORAGE PUBLIC WAREHOUSEMEN

3-601. (3592.44) Farm storage supervisor.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 8—AGRICULTURAL SEEDS

Section
3-801. Definitions.
3-802. Labeling of agricultural seed.
3-805. Inspection by director of state grain and seed laboratory—reports—enforcement.
3-807. Samples may be sent to the laboratory for testing.
3-809. Certified seeds—advertisement—definition.
3-810. Rules and regulations by Montana state college—certification agencies.
3-811. Certification work on self-supporting basis.
3-812. College exempt from liability.
3-813. Withholding certification.
3-814. Unlawful use of certification—penalty.
3-815. Montana seed laws not repealed.

3-801. (3593) **Definitions.** Terms used in this act and not otherwise identified, are hereby defined:

1. The term "agricultural seeds" or "agricultural seed" shall include the seeds of the legumes, such as alfalfa, clovers, sweet clover, field and canning peas, field beans, vetches, and soy beans; the grasses, such as the blue grasses, timothy, redtop, brome grasses, canary grass, fescues, oat grass, orchard grass, rye grasses, and wheat grasses; the cereals, such as wheat, oats, barley, rye, corn, and hybrid corn; and miscellaneous crops such as rape, buckwheat, millet, sorghums, mustard, flax; together with seeds of any other crops that may be raised as field crops in Montana, when such are sold, offered, or exposed for sale within this state, country or territory, for seeding purposes within this state.

2. (a) The term "weed seeds" shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.

(b) Noxious weed seeds are hereby divided into three groups, defined in paragraphs (1), (2) and (3) of this subsection, as follows:

(1) Group I "noxious weed seeds" are the seeds of perennial weeds such as not only reproduce by seed, but also spread by underground roots or stems, and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Group I, "noxious weed seeds" are the seeds of,

Canada Thistle	(Cirsium arvense)
	(Carduus arvensis)
Leafy Spurge	(Euphorbia esula)
White Top	(Lepidium (Cardaris) draba)
Perennial peppergrass	(Cararia repens)
(Hoary cress)	(Hymneophysa (Cardaria) pubescens)
Quack Grass	(Agropyron repens)
Russian Knapweed	(Centaurea Picris)
	(Centaurea repens)
Perennial Sow Thistle	(Sonchus arvensis)
Wild Morning Glory (Field Bindweed)	(Convolvulus arvensis)

(2) Group II, "noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens of the state of Montana, but which can be controlled by good cultural practice. Group II, "noxious weed seeds" of the state of Montana are the seeds of,

Dodder	(Cuscuta Spp.)
Blue Flowering Lettuce	(Lactuca pulchella)
St. Johnswort (Klamath-weed)	(Hypericum perforatum)
White horsenettle (Silver Leaf nightshade)	(Solanum elaeagnifolium)
Wild Onion (Wild Garlic)	(Allium vineale)
Ox-eye Daisy	(Chrysanthemum leucanthemum)

(3) Group III, "noxious weed seeds" are the seeds of such weeds as are a menace to agriculture but are less serious than those included in Group II of this classification. Group III, "noxious weed seeds" are the seeds of,

Buckhorn	(Plantago Lanceolata)
Wild Mustard	(Brassica Supp.)
Fan Weed (French Weed)	(Thlaspi Anvense)
Sheep Sorrell	(Rumex Acetosella)
Curled Dock	(Rumex Crispus)
Wild Oats	(Avena fatua)

3. The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

4. The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when such seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of such seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

5. The term "name of state in which such seed was grown" shall mean any of the several states of the United States or the foreign country.

6. The term "other crop seeds" shall mean any agricultural seeds other than the seed or the mixture of agricultural seeds under consideration.

7. The term "sell" shall include "offer for sale", "expose for sale", "have in possession for sale", "exchange", "barter", or "trade". It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

History: En. Sec. 1, Ch. 12, L. 1913; re-en. Sec. 3593, R. C. M. 1921; amd. Sec. 2, Ch. 88, L. 1939; amd. Sec. 1, Ch. 155, L. 1951.

Amendment

The 1951 amendment substituted the present definition of "weed seeds" in subd. 2 for former subds. 2 and 3 which defined "noxious weeds" as those especially difficult to control including "Quack grass, fanweed, wild oats, dodder, Canada thistle, wild mustard, wild morning glory, white top, leafy spurge, perennial sow thistle, Russian knapweed, and blue lettuce" and defined "weed seed" as "noxious weeds above listed, and all seeds not listed as agricultural seeds."

Mustard Seed as Grain

Mustard seed is a grain and subject to the provisions of the Warehouse Receipts Act. Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1085.

3-802. (3594) **Labeling of agricultural seed.** The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the preceding section, which contains one (1) pound, or more, of such agricultural seeds, whether in package or in bulk, shall before offering such seeds for sale affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy, such label containing a statement specifying:

1. A lot number or other distinguishing mark; the commonly accepted name of the kind or kinds of such agricultural seed, together with the variety name, and if such is not known, the fact must be so stated by using the word "unknown".

1a. Name of state, country or territory, in which such agricultural seed was grown.

2. The approximate percentage of germination of such agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of such hard seeds may be added to the percentage of germination, and stated as "total live seed".

3. The approximate percentage, by weight, of pure seed; meaning the freedom of such agricultural seeds from inert matter and from other seeds.

4. The approximate percentage, by weight, of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in such agricultural seeds.

5. The approximate total percentage by weight of weed seeds.

5a. The approximate percentage by weight of other crop seeds in such agricultural seeds.

6. The name, and the approximate number, per pound of agricultural seed, of each kind or species of noxious weed seeds specified in Groups I, II and III, section 3-801, subparagraphs (1), (2) and (3) of paragraph 2 thereof, as follows:

Group I, noxious weed seeds, the name or names of each of the noxious weed seeds present, and the number thereof, singly or collectively, per pound of agricultural seed, in numbers less than one (1) noxious weed seed in fifty (50) grams of agricultural seed. If such numbers of Group I noxious weed seeds exceed one (1) in fifty (50) grams of seed, such seed shall not be sold within the state of Montana.

Group II, noxious weed seeds, the name or names of each of the noxious weed seeds present, and the number thereof, singly or collectively, per pound of seed, in excess of one (1) noxious weed seed in fifty (50) grams of agricultural seed.

Group III, noxious weed seeds, the name or names of each of the noxious weed seeds present, and the number thereof, singly or collectively, per pound of seed, in excess of one (1) noxious weed seed in ten (10) grams of agricultural seed.

7. The full name and address of the seedsman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said agricultural seed for sale.

8. Mixtures of agricultural seeds which contain two (2) or more kinds of such seeds in excess of five percent (5%) by weight of each, when sold, offered, or exposed for sale as mixtures, shall have affixed thereto, in a conspicuous place on the exterior of the container of such mixtures of seeds, a plainly written or printed tag or label in the English language, stating:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of five percent (5%) by weight of the total mixture.

(bb) Approximate percentage by weight of broken seeds and other inert matter in such mixture of agricultural seeds.

(c) Approximate percentage by weight of weed seeds as defined in subdivision 2 of section 3-801.

(cc) Approximate percentage by weight of other crop seed in such mixture of agricultural seeds.

(d) The name and approximate number per pound of each kind of the seeds or bulblets of the noxious weeds listed in subdivision 2, of section 3-801, which are present, singly or collectively, in excess of nine (9) seeds or bulblets per pound.

(e) Approximate percentage of germination of each kind of agricultural seed present in such mixture in excess of five percent (5%) by weight, together with the month and year said seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated, separately; with the provision that any portion or all of such hard seed may be added to the percentage of germination and stated as "total live seed".

(f) Full name and address of the vendor of such mixture.

(g) When space is provided on labels appearing on seed, providing for the insertion of specific items relative thereto and such spaces are left open, the blank space or spaces shall be deemed to imply that the word "none" was intended, when such interpretation is reasonable.

9. The commissioner of agriculture of the state of Montana shall prescribe the form and outline text of all labels to be used as provided for in section 3-802.

10. Prohibition of sales of certain seeds. It shall be unlawful for any person, firm, co-partnership, corporation or association to sell, or to offer for sale, or to expose or display for sale, any agricultural seed within the state of Montana, irrespective of the place of origin of such seed, which contains noxious weed seeds of any one, or more, of said groups of noxious weed seeds, as follows:

(1) Group I, noxious weed seeds in excess of nine (9) such seeds per pound of agricultural seed; or

(2) Group II, noxious weed seeds in excess of nine (9) such seeds per pound of agricultural seeds, unless stated on the analysis tag or label; or

(3) Group III, noxious weed seeds in excess of forty-five (45) such seeds per pound of agricultural seed unless stated on the analysis tag or label; or

(4) Any agricultural seed containing in excess of two per centum (2%) or more of weed seed; or

(5) Any agricultural seed which has a germination test dated more than nine (9) calendar months prior to date of sale.

11. Commissioner's right to revise or amend. The commissioner of agriculture may, with the written approval of the director of the Montana experiment station recorded prior to or within ten (10) days after the public hearing, prescribed herein, add to or remove from, revise, or modify

the foregoing groups and classifications of noxious weed seeds, and the noxious weed seeds within any groups or classifications, as the circumstances may require in aid of the purpose of this act to prevent or diminish the distribution and occurrence of such noxious weed seeds within the state of Montana, but no additions, removals or modifications shall be made without a full public hearing, on adequate and informative written or published notice plainly stating the exact additions, removals or modifications proposed to be made, and said notice shall be given by the commissioner at least thirty (30) days before the day set for said hearing and shall state the time and place of said hearing, and said notice shall be published in three (3) newspapers of general circulation in the state, and such notice shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. If any revision or modification is determined to be made as a result of any such hearing, the same shall be promulgated by a written order of the commissioner, countersigned "approved" by the director of the Montana experiment station, plainly stating the revisions or modifications and the effective date or dates thereof, and any and all qualifications, exceptions or conditions connected with such revisions or modifications.

History: En. Sec. 2, Ch. 12, L. 1913; re-en. Sec. 3594, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1929; amd. Sec. 1, Ch. 192, L. 1937; amd. Sec. 3, Ch. 88, L. 1939; amd. Sec. 2, Ch. 155, L. 1951.

Amendment

The 1951 amendment substituted the words "pure seed" in subd. 3 for "purity," substituted present subd. 6 for a former subdivision which required the approximate number per pound of each kind of the seeds of the noxious weeds in excess of one in each specified number of grams of agricultural seeds depending on the size of the seed to be stated on the label, substituted "nine (9) seeds or bulblets per pound" in sub. 8(d) for "one seed or bulblet in each fifteen (15) grams of such mixture," substituted "The commissioner of agriculture of the state of Montana" in subd. 9 for "The Montana commissioner of agriculture, labor and industry," substituted "form and outline text of all labels" in such subdivision for "form of labels," and added subds. 10 and 11.

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3 C.J.S. § 5.

3-805. (3597) **Inspection by director of state grain and seed laboratory —reports—enforcement.** The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses of and test seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture to administer and enforce this act. For that

purpose, he is hereby empowered to make all proper rules and regulations not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. To aid in the enforcement, he or his agents shall have power to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural seed which the commissioner of agriculture or his agent finds in violation of any of the provisions of this act, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. The seed shall not be confiscated nor destroyed and upon proper correction, by reprocessing, labeling or otherwise, and when in the judgment of the commissioner of agriculture, the requirements of this act have been met, the stop sale order shall be lifted and the seed be permitted to be sold in the regular channels of trade. The director of the Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate all necessary and proper rules and regulations relating to all his duties enumerated herein.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R. C. M. 1921; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951.

Amendment

The 1951 amendment omitted a second sentence which read "When said Montana grain inspection laboratory shall find by its examinations, analyses, or test that any person, firm or corporation has violated any of the provisions of this act, it shall give notice of such violations to the vendor or consignee of said lot of seed and at the same time mail a copy of such notice to the person, firm or corporation whose tag or label was found affixed thereto," substituted "department of agriculture" in the second paragraph for "department of agriculture, labor and industry" and added the third sentence of the second paragraph.

3-807. (3599) **Samples may be sent to the laboratory for testing.** Any citizen of the state of Montana may request the Montana grain inspection laboratory of the Montana experiment station to examine, analyze and test samples of seed upon payment of the fee thereof and compliance with the regulations promulgated by the director of the state grain inspection laboratory governing the submission of seed samples for such service. Samples of seed analyzed and tested, shall be charged for at rates determined jointly by the commissioner of agriculture, the director of the Montana agricultural experiment station, and the director of the Montana grain inspection laboratory. All such fees are hereby appropriated for the use and benefit of the Montana grain inspection laboratory of the Montana agricultural experiment station to defray the expenses incurred by said laboratory, under the provisions of this act.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R. C. M. 1921; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 8, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951.

Amendments

The 1949 amendment substituted the second sentence for a sentence and clause which read: "Other samples of seed analyzed and tested for purity and germination, or either, shall be charged for at the rate of fifty cents (50c) each, for unmixed seeds. Samples of mixed seeds analyzed and tested shall be charged for at the rate of seventy-five cents (75c) per hour for the actual time required for making analyses and tests."

The 1951 amendment substituted the first sentence for a sentence which provided that any citizen of the state could obtain the test of five samples in one year free of charge if transportation charges were prepaid and it omitted the word "Other" which began the second sentence.

Separability Clause

Section 5 of Ch. 155, L. 1951 read: "If any section, subsection, sentence, clause,

or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Repealing Clauses

Section 2 of Ch. 85, L. 1949 and Sec. 6 of Ch. 155, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 85, L. 1949 provided the act should take effect upon its passage and approval. Approved February 25, 1949.

Section 7 of Ch. 155, L. 1951 provided the act shall be in effect from and after July 1, 1951.

3-809. Certified seeds—advertisement—definition. Every person, firm, association, or corporation who shall issue, use, or circulate any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, written or printed representation or description, of or pertaining to seeds or plant parts intended for propagation or sale, or sold or offered for sale wherein the words "Montana State Certified", "State Certified", "Montana Certified", or similar words or phrases are used or employed, shall be subject to the provision of this act. Every issuance, use or circulation of any certificate and/or other instrument, as in this section above described, shall be deemed to be "certification" as that term is employed in this act.

History: En. Sec. 1, Ch. 11, L. 1951.

Title of Act

An act providing for certification of state certified seeds or plant parts intended for propagation or sale; to authorize certification of such seeds or plant parts through Montana State College, hereafter referred to as the college, or its designated agents; to regulate the relations of said college to its certifying agents and its financial responsibility for certification work done by its agents; to provide such certification shall be on a self-supporting basis; to provide for the manner and form of certification; and to provide penalties for violations of the act.

3-810. Rules and regulations by Montana state college—certification agencies. Every person, firm, association, or corporation subject to the provisions of this act shall observe, perform or comply with all rules, regulations and requirements fixed, established or specified by Montana state college, hereafter referred to as the college, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said college directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification, within the provisions of the act shall be made or authorized except by or through said college.

History: En. Sec. 2, Ch. 11, L. 1951.

3-811. Certification work on self-supporting basis. Certification work, whether conducted by said college or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951.

3-812. College exempt from liability. The said college shall not be financially responsible for debts incurred by damages, or contracts broken by certifying agencies in conducting certification work.

History: En. Sec. 4, Ch. 11, L. 1951.

3-813. Withholding certification. The said college or its designated agency or agencies, may withhold certification from any grower of seeds

or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of this act, including standards, rules and regulations laid down by the said college or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951.

3-814. Unlawful use of certification—penalty. It shall be unlawful for any person, firm, association or corporation to issue, make, use or circulate any certification as defined in this act, without the authority and approval of the said college, or its duly authorized agency, as herein provided. Every person, firm, association, or corporation who shall violate any of the provisions of this act pertaining to certification shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars ($100.00) nor exceeding five hundred dollars ($500.00) for each offense.

History: En. Sec. 6, Ch. 11, L. 1951.

3-815. Montana seed laws not repealed. Nothing contained in this act shall be construed to repeal any provisions of the Montana state seed laws.

History: En. Sec. 7, Ch. 11, L. 1951.

CHAPTER 11—HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

3-1101. (3608) **Division of horticulture—duties.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

3-1501. (3635) **Repealed.**

Repeal

This section (Sec. 56, Ch. 216, Laws 1921) charging the department of agriculture, labor and industry through the division of labor with the duty of enforcing certain labor laws, was repealed by Sec. 13, Ch. 177, Laws 1951. Labor laws are now enforced by the department of labor and industry, see sec. 44-1605.

3-1502. (3636) **Maintenance of employment offices by city council.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of labor and industry, see sec. 3-101.1.

3-1503. (3637) **Examination of witnesses—inspection of factories, etc.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of labor and industry, see sec. 3-101.1.

3-1504. (3638) **Statistics—preparation and publication.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of labor and industry, see sec. 3-101.1.

CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

Section 3-1705. Registration and license of fertilizers—fee—statements of amounts of fertilizer sold—cancellation of registration for failure to file statements.
3-1712. Title.
3-1713. Enforcing official.
3-1714. Definitions of words and terms.
3-1715. Registration.
3-1716. Labeling.
3-1717. Inspection fees.
3-1718. Inspection, sampling, analysis.
3-1719. Minimum plant food content.
3-1720. False or misleading statements.
3-1721. Grade-tonnage reports.
3-1722. Publications.
3-1723. Rules and regulations.
3-1724. Cancellation of registration.
3-1725. "Stop sale" orders.
3-1726. Seizure, condemnation, and sale.
3-1727. Violation.
3-1728. Exchanges between manufacturers.

3-1705. (4208.5) **Registration and license of fertilizers—fee—statements of amounts of fertilizer sold—cancellation of registration for failure to file statements.** (a) Before any commercial fertilizer is sold or offered for sale within the state of Montana, the manufacturer, importer or party who causes it to be sold or offered for sale, shall separately register with the commissioner of agriculture of the state of Montana, each and every brand and also each different mixed or unmixed commercial fertilizer which he offers for sale under the same brand, and shall pay annually to said commissioner, before offering such product for sale, a license fee of twenty-five dollars ($25.00), for each commercial fertilizer so registered and offered for sale in this state, and shall at the same time file with said commissioner a certified copy of the statement and certificate referred to in sections 3-1702 and 3-1703 and shall also deposit with said commissioner a sealed glass jar containing not less than two (2) pounds of such fertilizer, with an affidavit that it is a fair sample of the article thus to be sold, or offered for sale. The said commissioner of agriculture may refuse to register materials whose value in improving soil conditions cannot be established by experimental evidence.

(b) It is required of each registrant who causes fertilizer to be sold or offered for sale under this act that he furnish the commissioner of agriculture with a written statement of the amount of each brand of fertilizer sold by him in the state. Said statement shall include all sales for the periods of January first to and including June thirtieth and of July first to and including December thirty-first of each year. The commissioner may, in his discretion, cancel the registration of any person or firm failing to comply with this section if the above statement is not made within thirty (30) days from date of notification. The commissioner, however, in his discretion, may grant a reasonable extension of time.

History: En. Sec. 5, Ch. 153, L. 1931; amd. Sec. 4, Ch. 67, L. 1935; amd. Sec. 2, Ch. 72, L. 1947; amd. Sec. 1, Ch. 129, L. 1951.

Amendment

The 1951 amendment omitted the words "and every brand of" which followed the words "license fee of twenty-five dollars ($25.00), for each" in paragraph (a).

Repealing Clause

Section 2 of Ch. 129, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 129, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

3-1712. Title. This act shall be known as the "Montana Fertilizer Law of 1957."

History: En. Sec. 1, Ch. 41, L. 1957.

Title of Act

An act to regulate the sale and distribution of mixed fertilizers and fertilizer materials in the state of Montana; providing this act shall be known as "The Montana Fertilizer Law of 1957"; designating the administrator of the act to be the commissioner of agriculture of Montana; defining words and terms used in this act; requiring registration of brands and grades of commercial fertilizers, and fees collected therefore before sale of same; requiring labeling of commercial fertilizers before sale of same; providing for inspection fees, inspection, sampling and analysis of commercial fertilizers; providing for a minimum food content of commercial fertilizers; providing for false or misleading statements on containers of commercial fertilizers; providing for grade tonnage reports of commercial fertilizers to the commissioner of agriculture of Montana; providing for a publication of sale of commercial fertilizers by the commissioner of agriculture of Montana requiring the commissioner of agriculture of Montana to prescribe rules and regulations to carry this act into effect; providing for cancellation of registrations; providing for "stop sale" orders by commissioner of agriculture; providing for seizure, condemnation, and sale of commercial fertilizers not in compliance with this act; providing for penalties in violation of this act; providing for exchanges of commercial fertilizers between manufacturers; providing for a saving clause; providing for a repealing clause.

3-1713. Enforcing official. This act shall be administered by the commissioner of agriculture of the state of Montana, hereinafter referred to as the "commissioner."

History: En. Sec. 2, Ch. 41, L. 1957.

3-1714. Definitions of words and terms. When used in this act:

(a) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(b) The term "mixed fertilizers" means any physical combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(c) "Commercial fertilizer" includes mixed fertilizer and/or fertilizer materials.

(d) The term "bulk fertilizer" means commercial fertilizer distributed in nonpackaged form.

(e) "Brand" means a term, design, or trade mark used in connection with one or several grades of commercial fertilizer.

(f) Guaranteed analysis:

(1) The term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) .....per cent
Available Phosphoric Acid (P_2O_5) .....per cent
Soluble Potash (K_2O) .....per cent

(2) The term "guaranteed analysis" in the form specified in subparagraph (1) includes:

(i) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

(ii) When permitted by the commissioner, additional plant nutrients expressed as the elements.

(iii) Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton may be shown.

(g) The term "grade" means the percentages of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis."

(h) "Official sample" means any sample of commercial fertilizer taken by the chemist of the agricultural experiment station of Montana state college or his deputy.

(i) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(j) "Per cent" or "percentage" means the percentage by weight.

(k) "Person" includes individual, partnership, association, firm, and corporation.

(l) The term "distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers. The term "distributor" means any person who distributes.

(m) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(n) The term "registrant" means the person who registers commercial fertilizer under the provisions of this act.

(o) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding and other means.

History: En. Sec. 3, Ch. 41, L. 1957.

3-1715. Registration. (a) Each brand and grade of commercial fertilizer shall be registered before being offered for sale, sold or distributed in this state. The application for registration shall be submitted to the commissioner on a form furnished by the commissioner and shall be accompanied by a fee of thirty-five dollars ($35.00) per brand and ten dollars ($10.00) per grade. Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

(1) The brand and grade.

(2) The guaranteed analysis.

(3) The sources from which the nitrogen, phosphoric acid and potash are derived.

(4) The commissioner may require a manufacturer of commercial fertilizer to furnish additional information if the foregoing does not adequately describe the fertility value claimed and/or the composition of the product.

(5) The name and address of the registrant.

(b) A distributor shall not be required to register any brand or grade of commercial fertilizer which is already registered under this act by another person.

(c) The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.

(d) Custom blended fertilizers individually compounded to a buyer's specifications and manufactured, sold and delivered on the premises where manufactured, direct to the consumer, shall be exempt from the registration requirements set forth in section 4 (a) [this section] of this act. Such fertilizer shall bear a tag or invoice stating the composition of the material by weight or percentage of ingredients used in place of the labeling requirements set forth in section 5 [3-1716]. A custom blended fertilizer can be resold only when registered and labeled as a mixed fertilizer. All ingredients shall be subject to the payment of the inspection fees as set forth in section 6 (a) [3-1717(a)] except those materials brought to the manufacturer by the customer for custom blending.

History: En. Sec. 4, Ch. 41, L. 1957.

3-1716. Labeling. (a) Any commercial fertilizer offered for sale or sold or distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form the net weight and the information required by items 1, 2, and 5 of paragraph (a) section 4 [3-1715] either (1) on tags affixed to the end of the package between the ears and/or the sewed end or (2) directly on the package in which case, for bags containing fifty (50) pounds or more, the grade shall appear also on the end or the side of the package in type that is plainly legible.

(b) If distributed in bulk, a written or printed statement of the weight and the information required by items 1, 2 and 5 of paragraph (a) of section 4 [3-1715], shall accompany delivery and be supplied to the purchaser.

History: En. Sec. 5, Ch. 41, L. 1957.

3-1717. Inspection fees. (a) There shall be paid to the commissioner for all commercial fertilizers offered for sale, sold, or distributed in this state an inspection fee at the rate of fifteen cents (15¢) per ton: Provided that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act. On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be no inspection fee. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee shall apply only to that portion sold in packages of over ten (10) pounds.

(b) Payment of the inspection fee shall be evidenced by a statement made in due form of law, of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the commissioner.

Every registrant who distributes commercial fertilizer in this state shall:

File an affidavit semiannually within thirty (30) days after each January 1 and each July 1 of each year setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six-months' (6) period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee amounting to ten (10) per cent (minimum ten dollars ($10.00)) of this amount due shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

History: En. Sec. 6, Ch. 41, L. 1957.

3-1718. Inspection, sampling, analysis. (a) At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial fertilizers distributed within this state at time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this act. The chemist, individually or through his deputy, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to the provisions of this act and the rules and regulations pertaining thereto.

(b) The methods of analysis and sampling shall be those adopted by the chemist from sources such as those of the association of official agricultural chemists, and the results of analysis, together with such additional information as the said chemist may deem advisable, shall be transmitted promptly to the commissioner of agriculture, to the manufacturer and to the dealer or person in whose possession the product was sampled.

(c) The commissioner, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in paragraph (h) of section 3 [3-1714], and obtained and analyzed as provided for in paragraphs (a) and (b) of this section.

(d) If on the basis of an inspection and/or the analysis of the official sample a commercial fertilizer is found to be subject to penalty or other legal action, the commissioner shall forward to the registrant notification of the violation at least ten days before the report of the chemist is made public. If during that period no adequate evidence to the contrary is made available to the commissioner the report shall become official. Upon request the chemist of the agricultural experiment station at Montana state college shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

History: En. Sec. 7, Ch. 41, L. 1957.

3-1719. Minimum plant food content. No superphosphate containing less than eighteen per cent (18%) available phosphoric acid nor any mixed fertilizer claimed to contain nitrogen, available phosphoric acid or soluble potash, in which the sum of the guarantees for the nitrogen, available phosphoric acid and soluble potash totals less than twenty per cent (20%) shall be distributed in this state except for complete fertilizers containing twenty-five per cent (25%) or more of their nitrogen in water-insoluble form of plant or animal origin, in which case the total nitrogen, available phosphoric acid and soluble potash shall not total less than eighteen per cent (18%).

History: En. Sec. 8, Ch. 41, L. 1957.

3-1720. False or misleading statements. A commercial fertilizer is misbranded if it carries any false or misleading statement upon or attached to the container, or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer. It shall be unlawful to distribute a misbranded commercial fertilizer.

History: En. Sec. 9, Ch. 41, L. 1957.

3-1721. Grade-tonnage reports. Each person registering commercial fertilizers under this act shall furnish the commissioner with a confidential written statement of the tonnage of each grade of commercial fertilizer sold by him in this state. Said statement shall include all sales for the periods of January 1 to and including June 30 and of July 1 to and including December 31 of each year. The commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within thirty (30) days from day of the close of each period. The commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operation of any person. This report may at the discretion of the registrant be combined with the report required by section 6 (b) [3-1717(b)] of this act.

History: En. Sec. 10, Ch. 41, L. 1957.

3-1722. Publications. The commissioner shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable, and report of the results of the analysis based on official samples of commercial fertilizers sold within the state.

History: En. Sec. 11, Ch. 41, L. 1957.

3-1723. Rules and regulations. For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing following due public notice, to enforce such rules and regulations relating to the distribution of commercial fertilizers as he may find necessary to carry into effect the full intent and meaning of this act.

History: En. Sec. 12, Ch. 41, L. 1957.

3-1724. Cancellation of registration. The commissioner is authorized and empowered to cancel the registration of any commercial fertilizer or

to refuse to register any commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this act or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the commissioner.

History: En. Sec. 13, Ch. 41, L. 1957.

3-1725. "Stop sale" orders. The commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer as being offered or exposed for sale in violation of any of the provisions of this act until the law has been complied with and said commercial fertilizer is released in writing by the commissioner or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

History: En. Sec. 14, Ch. 41, L. 1957.

3-1726. Seizure, condemnation, and sale. Any lot of commercial fertilizer not in compliance with the provisions of this act shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this act and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this act.

History: En. Sec. 15, Ch. 41, L. 1957.

3-1727. Violation. (a) If it shall appear from the examination of any commercial fertilizer that any of the provisions of this act or the rules and regulations issued thereunder have been violated, the commissioner shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. If it appears after such a hearing, either in the presence or absence of the person so notified, that any of the provisions of this act or rules and regulations issued thereunder have been violated, the commissioner may certify the facts to the proper prosecuting attorney.

(b) Any person convicted of violating any provision of this act or the rules and regulations issued thereunder shall be punished in the discretion of the court.

(c) Nothing in this act shall be construed as requiring the commissioner or his representative to report for prosecution or for the institution

of seizure proceedings minor violations of the act when he believes that the public interests will be best served by a suitable notice of warning in writing.

(d) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(e) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

History: En. Sec. 16, Ch. 41, L. 1957.

3-1728. Exchanges between manufacturers. Nothing in this act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer to manufacturers, or manipulators who have registered their brands and grades as required by the provisions of this act.

History: En. Sec. 17, Ch. 41, L. 1957.

Separability Clause

Section 18 of Ch. 41, Laws 1957 read "Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Repealing Clause

Section 19 of Ch. 41, Laws 1957 read "Repeal. All laws and parts of laws in conflict with or inconsistent with the provisions of this act are hereby repealed."

CHAPTER 18—HAY DEALERS—BOND AND LICENSE

3-1801. Hay dealer's license required.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-1805. Rules and regulations by commissioner.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S BOND AND LICENSE

Section 3-1901. Standard classes of mustard seed—grade requirements.
3-1903. Weights per bushel.

3-1901. Standard classes of mustard seed—grade requirements. The standard classes of mustard seed for the state of Montana shall be as follows:

Fancy—Cultivated tame yellow mustard seed.
Class 1—Cultivated tame yellow mustard seed.
Class 2—Cultivated tame brown mustard seed.

Class 3—Cultivated tame Montana oriental mustard seed.
Class 4—Mixed cultivated tame mustard seed, and
Sample—Hereinafter defined.

Classes 1, 2 and 3 shall contain not more than five per cent (5%) of other classes. Class 4 shall be any mixture of cultivated tame mustard seed having an admixture of other classes in excess of five per cent (5%), and shall be graded according to the predominating class in the mixture. Sample grade shall include mustard seed which does not come within the requirements of any of the following grades, No. 1 to No. 3 inclusive, or which has any objectionable foreign odor or is sour, heating, hot, or is otherwise of distinctly low quality or contains small inseparable stones or cinders. Grade requirements for cultivated tame mustard seed. Based after the removal of dockage.

GRADE NUMBER	Sound Cultivated Mustard not less than	Damaged Kernels		Other Classes		Foreign Material Other Than Dockage		
		Total	Heat Damaged	Total	Wild Mustard	Total	Cockle Seed	Total Weed Seed Content
Fancy	99 %	1 %	0	0	0	0	0	.0
1	98½%	1½%	0.1%	0.5%	0.1%	1 %	0.1%	0.3%
2	97 %	3 %	0.2%	2.0%	0.2%	1½%	0.2%	0.5%
3	95 %	5 %	0.5%	5.0%	0.5%	2 %	0.3%	0.7%

Sample: Sample grade shall include mustard seed which does not come within the requirements of any of the grades, No. 1 to No. 3, inclusive, or which has any objectionable foreign odor or is sour, heating, hot, or is otherwise of distinctly low quality or contains small inseparable stones or cinders.

History: En. Sec. 1, Ch. 35, L. 1941; amd. Sec. 1, Ch. 170, L. 1957.

Amendment

The 1957 amendment added cockle seed with its per cents to the form and made other percentage changes, see Form in parent volume for comparison.

3-1903. Weights per bushel. The following shall be legal test weights per bushel, namely: The weight per Winchester bushel as determined by

the testing apparatus and the method of use thereof described in Bulletin 1065 U. S. D. A. dated May 18, 1922, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

Weight per bushel for tame yellow mustard seed shall be:

Fancy	56 lbs.
No. 1	54 lbs.
No. 2	52 lbs.
No. 3	50 lbs.

Weight per bushel for tame brown and tame Montana oriental mustard seed shall be:

No. 1	52 lbs.
No. 2	51 lbs.
No. 3	50 lbs.

All seeds weighing less than the above per bushel shall be graded as sample weight, provided that the percentage of damage, heat damage, sound cultivated mustard seed, foreign material and determination of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking.

History: En. Sec. 3, Ch. 35, L. 1941; amd. Sec. 2, Ch. 170, L. 1957.

Amendment

The 1957 amendment decreased the weight per bushel for tame brown and tame Montana oriental mustard seed from No. 1—53 lbs. to No. 1—52 lbs. and No. 2—52 lbs. to No. 2—51 lbs.

Repealing Clause

Section 3 of Ch. 170, Laws 1957 repealed all acts and parts of acts in conflict therewith.

3-1906. Administration.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 20—COMMERCIAL FEEDS—REGULATION

Section 3-2001. Definitions.
3-2002. Manufacturers and other sellers of commercial feed to label container to show certain ingredients of product.
3-2004. Fee payable for each registered brand or formula—disposition of fee—feed sold in bulk.
3-2006. Chemist of experiment station of Montana state college to test samples.

3-2001. Definitions. The term "commercial feeds" shall be held to include all materials used for feeding animals or poultry, except the following:

(a) Unmixed whole seeds or grains;

(b) The mixed or unmixed, ground or rolled feeds made directly from and consisting of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir, milo and other seeds or grains and containing no other ingredients;

(c) Whole, chopped or ground hays, straws, corn stover and silage, when unmixed with other materials and not pelleted;

(d) Feeds sold in small quantities and used solely for household pets except dogs;

(e) Wet beet pulp, barley sprouts, and whole screenings.

History: En. Sec. 1, Ch. 228, L. 1943; amd. Sec. 1, Ch. 127, L. 1951.

Compiler's Note

For effective date of 1951 amendment, see note to sec. 3-2006.

Amendment

The 1951 amendment in clause (b) inserted the words "ground or rolled," substituted "feeds" for "meals," omitted the words "feeds from oil seeds" which followed "milo" and added the words "and containing no other ingredients," and in clause (c) added the words "and not pelleted."

3-2002. Manufacturers and other sellers of commercial feed to label container to show certain ingredients of product. All manufacturers, importers, jobbers, firms, associations, corporations or persons shall before selling or offering for sale in this state any brand of commercial feed, including wheat bran and wheat middlings straight or mixed, have printed on, or attached to each bag, package, carton or delivered with each bulk lot a plainly printed statement, hereafter referred to as the label, in a conspicuous place on the outside, containing a legible and clearly printed statement in the English language clearly and truly stating:

(a) The net weight of the contents of the package, bag, carton or bulk lot;

(b) The brand or trade name of the feed;

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum percentage of crude protein; (in all cases the maximum percentage of equivalent crude protein derived from non-protein nitrogen sources shall be stated.)

(e) The minimum percentage of crude fat;

(f) The maximum percentage of crude fiber;

(g) The name of each ingredient used in its manufacture;

The official names of all materials which have been so defined by the Association of American Feed Control Officials, shall be used in the declaration of the names of ingredients required by the provisions of this act;

(h) In the case of mixed feeds containing more than a total of ten percent (10%) of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in the case of mineral feeds, mixed or unmixed, which are manufactured, represented and sold for the primary purpose of correcting mineral deficiencies in rations for animals or poultry, and containing mineral ingredients generally regarded as dietary factors essential for normal nutrition, the minimum and maximum percentage of calcium (Ca), minimum percentage phosphorus (P) or iodine (I) and the maximum percentage of salt (NaCL), if the same be present. Provided that if no nutritional properties other than those of a mineral nature be claimed for a mineral feed product, the percentums of crude protein, crude fat and crude fiber may be omitted;

(i) In the case of feeds containing for their principal claim dietary factors in forms not expressible by the foregoing, such claims shall be ex-

pressed in a manner designated and in effect at the time by resolutions adopted by the Association of American Feed Control Officials;

(j) In all cases where the percentage of salt (NaCL) exceeds 2%, the true percentage of salt shall be stated.

History: En. Sec. 2, Ch. 228, L. 1943; amd. Sec. 2, Ch. 127; L. 1951.

Compiler's Note

For effective date of 1951 amendment, see note to sec. 3-2006.

Amendment

The 1951 amendment in clause (d) added the words in parentheses, in clause (h) substituted "correcting" for "supplying" preceding "mineral deficiencies," inserted the words "and maximum" preceding the words "percentage of calcium" and inserted the words "minimum percentage" preceding the word "phosphorus" and in clause (j) inserted the words "where the percentage of salt (NaCL) exceeds 2%."

3-2003. Registration brand or formula.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2004. Fee payable for each registered brand or formula—disposition of fee—feed sold in bulk. Each and every manufacturer, importer, jobber, firm, association, corporation, or person selling, or distributing any commercial feeds as defined in section 3-2001 shall pay annually to the commissioner a registration fee of ten dollars ($10.00) for each brand or feed formula registered. In the case of mixed feeds containing more than a total of ten percent (10%) of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in the case of mineral feeds, mixed or unmixed, which are manufactured, represented and sold for the primary purpose of correcting mineral deficiencies in rations for animals or poultry, and containing mineral ingredients generally regarded as dietary factors essential for normal nutrition, the annual registration fee shall be fifteen dollars ($15.00). Fees so collected shall constitute a fund for the payment of the cost of inspections, sampling, analyses, and other expenses necessary for putting into effect the provisions of this act. When feed is sold in bulk or in packages belonging to the purchaser, the manufacturer, importer, jobber, firm, association, corporation or person so selling shall furnish the purchaser with a card or cards upon which appears the statement required by the provisions of section 3-2002.

The registration fee and tax as provided in this section shall not apply to any feed mixed according to a formula furnished by a consumer or purchaser nor to the grains furnished by the consumer or purchaser which may be ground for his own personal use. Any feed mixed to a formula furnished by a consumer or purchaser which finds general use in the community shall be registered as a brand and subject to all provisions of this act.

History: En. Sec. 4, Ch. 228, L. 1943; amd. Sec. 1, Ch. 42, L. 1951.

Amendment

The 1951 amendment raised the fee set out in the first sentence from $2 to $10. added the second sentence, and substituted "the community" for "a community" in the last sentence.

Repealing Clause

Section 2 of Ch. 42, L. 1951 repealed all acts or parts of acts in conflict therewith.

3-2006. Chemist of experiment station of Montana state college to test samples. At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college, or his deputy, shall obtain at least one (1) sample of each brand or formula of commercial feed found sold, offered or exposed for sale or distributed in this state and shall make such analyses and tests as may be required to determine whether or not said feeds conform to the provisions of this act. For the purposes of collecting such samples, the said chemist, or his deputy is authorized to have free access during regular business hours to all places of business, mills, buildings, carriages, cars, and parcels of whatsoever kind used in this state in the manufacture, transportation, importation, sale, or storage of commercial feeds, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeds and to take therefrom samples for analysis, all such samples must be composites of equal portions of at least five (5) original packages or of at least five (5) portions from a bulk lot, taken in such manner as to be truly representative of the lot being sampled. Such samples shall be thoroughly mixed and immediately placed in containers which exclude air. Any sample, if requested, shall be divided into two (2) parts, and shall be placed in suitable containers and sealed, and one of said containers so sealed, if requested, shall be delivered to the person in charge of such feeds. The said chemist shall analyze or cause to be analyzed, such samples as are collected, in accordance with the methods of analysis in effect at the time by the Association of Official Agricultural Chemists of North America, and the result of analysis, together with such additional information as the said chemist may deem advisable, shall be transmitted promptly to the commissioner of agriculture, to the manufacturer, and to the dealer or person in whose possession the product was sampled, and shall be published in reports or bulletins from time to time. The manufacturer or person responsible for the placing of any commodity so sampled upon the market, or the dealer or person in whose possession the feed was found, shall upon request to the said chemist, within ten (10) days after report is mailed, be furnished with a portion of the official sample.

If he fails to agree with the analysis of the chemist, he may request an umpire who shall be one (1) of the list of not less than three (3) public chemists of recognized ability in feed analysis who shall be named by the chemist. Such umpire analysis shall be made at the expense of the manufacturer or seller requesting the same. The request for an umpire analysis must be made within ten (10) days after receipt of a portion of the official sample, and the results of the umpire analysis must be mailed to the chemist within twenty (20) days from the date the portion of the official sample is received by the manufacturer or seller of the feed in question. In case the umpire shall agree more closely with the chemist, the figures of the latter shall be considered correct, and in case the umpire shall agree more closely with the figures of the manufacturer or seller, then the figures of the manufacturer or seller shall be considered correct.

History: En. Sec. 6, Ch. 228, L. 1943; amd. Sec. 3, Ch. 127, L. 1951.

Amendment

The 1951 amendment substituted "commissioner of agriculture" for "commissioner of agriculture, labor and industry" wherever appearing and added the last paragraph.

Repealing Clause

Section 4 of Ch. 127, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 127, L. 1951 provided the act should be in effect from and after January 1, 1952.

3-2010. Commissioner to enforce act and prescribe rules.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 21—POULTRY PRODUCTS—FRUITS AND VEGETABLES—MARKETING REGULATIONS

3-2104. Hearing and notice thereof—appointment of committee—duties.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2106. Committee for trade area—members—duties—operation, etc.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

CHAPTER 22—POULTRY—MONTANA POULTRY IMPROVEMENT BOARD

Section 3-2201. The Montana poultry improvement board created, purposes, membership.
3-2204. Powers and duties.
3-2205. License fees.
3-2209. Products to be labeled.
3-2212. Violation a misdemeanor.

3-2201. The Montana poultry improvement board created, purposes, membership. There is hereby created a board to be known as the "Montana Poultry Improvement Board." This board is created for the following purposes:

(1) To promote the welfare of the poultry industry in Montana by: (a) determining dependable sources from which poultry may be purchased; (b) cooperating with other state and federal agencies in programs which will advance, promote, and improve the poultry industry in Montana; (c) improving poultry breeding in Montana by certification of the systematic breeding programs of the various hatcheries within the state; (d) cooperating with the Montana livestock sanitary board in controlling and eradicating communicable and infectious diseases of poultry; (e) by systematic inspection of chick dealers, hatcheries and hatching-egg producers, engaged in marketing poultry and poultry products.

(2) To act as the official state agency for Montana in cooperation with the Animal and Poultry Research Branch, U. S. Department of Agriculture, for the purpose of furthering the objectives and supervising the state's participation in the National Poultry Improvement Plan. These purposes are to be liberally construed in order that this board may effectuate programs which will be beneficial to the poultry industry in Montana.

The membership of the board shall be constituted as follows: The Montana livestock sanitary board executive officer; the head of the dairy division, state department of agriculture; the extension specialist in poul-

try, Montana state college, and two other members who shall be competent and experienced poultrymen who shall be the owners or operators of commercial poultry hatcheries; the appointive members to be appointed by the governor of the state of Montana, one such appointive member to hold office for a term of two years and the other appointive member to hold office for a term of four years from and after the first day of July, 1945, respectively, and thereafter the members of said Montana poultry improvement board who are competent and experienced poultrymen so appointed by the governor, shall hold office for a term of four years from and after their appointment and until their successors are appointed and qualify.

History: En. Sec. 1, Ch. 141, L. 1945; amd. Sec. 1, Ch. 46, L. 1957.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

3-2204. Powers and duties. The Montana poultry improvement board shall have power to employ a secretary and executive officer who need not be a member of the board. The said secretary and executive officer shall be a competent poultryman. The board may also employ and dismiss at will such other persons including legal assistance, as may be necessary to carry out the provisions of this act and to fix all fees and salaries to provide for expenses generally not inconsistent with law. The board is further authorized and directed to formulate and adopt a plan or plans whereby hatchery, baby chick and/or poult dealers and hatching-egg producers shall be inspected by employees of the board or such other persons as may be designated by the board.

No one shall be refused a license or have his license cancelled under this act unless and until he has been given an opportunity to have a hearing on the matter before the board. The person concerned may obtain same by submitting a written request to the board for such hearing. The board, in setting the time for hearing, shall give at least twenty (20) days notice of said hearing to such person. The board will adopt reasonable rules and regulations governing the conduct of hearings and shall specifically provide that any person requesting such hearing be permitted to be represented by legal counsel.

The board may adopt the standard breeding plan of accreditation and certification sponsored by the United States department of agriculture or any other plan sponsored by said department and to cooperate with said department in matters of poultry improvement, sanitary provisions and indemnity in cases of infectious disease. The board is further authorized to prescribe and collect fees for inspection and supervision and to prescribe and furnish labels, bands, and certificates of accreditation and certification and such other supplies as may be necessary; and to prescribe and collect fees for the same. The board is further authorized to do such other things as it may deem needful and expedient to improve poultry breeding, poultry sanitation, and practices, and to give effect to this act.

History: En. Sec. 4, Ch. 141, L. 1945; amd. Sec. 2, Ch. 46, L. 1957.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

3-2205. License fees. No person shall hereafter engage in the business of a hatchery, baby chick and/or poult dealer, salesmen, or hatching-egg producer in Montana, without first securing from the Montana poultry improvement board, a license to engage therein, which license shall expire on the first day of January of each year, except in cases of flock owners, and in those cases the license shall expire twelve (12) months after the last official pullorum test was conducted by the board.

Licenses will be issued only upon payment to said board of such annual fees as may be fixed by said board for each of the said occupations, not exceeding, however, the amounts herein set forth, to wit: (a) Hatcheries—Under 50,000 capacity—$10.00; (b) Hatcheries—Over 50,000 capacity—$25.00; (c) Baby Chick and/or Poult Dealers and Salesmen—$5.00; (d) Breeders, hatching-egg producers, the sum of $1.00 up to 200 breeder hens; $2.50 up to 400 breeder hens; $5.00 up to 800 breeder hens; $7.50 up to 1,250 breeder hens; $10.00 over 1,250 breeder hens per year.

History: En. Sec. 5, Ch. 141, L. 1945; amd. Sec. 3, Ch. 46, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

3-2206. Repealed.

Repeal

This section (Sec. 6, Ch. 141, L. 1945), relating to the regulation of advertising and selling of poultry, was repealed by Sec. 6, Ch. 46, Laws 1957.

3-2208. Repealed.

Repeal

This section (Sec. 8, Ch. 141, L. 1945), relating to cooperation with the state livestock sanitary board, was repealed by Sec. 6, Ch. 46, Laws 1957.

3-2209. Products to be labeled. All poultry and products sold or shipped under the authority of this act shall be uniformly labeled with designs prescribed and furnished by the Montana poultry improvement board, provided that all labeling for testing, approval and accreditation as to disease shall be first approved by the Montana livestock sanitary board.

History: En. Sec. 9, Ch. 141, L. 1945; amd. Sec. 4, Ch. 46, L. 1957.

Amendment

The 1957 amendment substituted "Montana poultry improvement board" for "Montana poultry breeders, hatchers and distributors."

3-2212. Violation a misdemeanor. Violation of any of the provisions of this act shall be a misdemeanor; and as additional or alternative penalties, the board may revoke any license issued, and may by injunction restrain the continuance of any operations covered by this act.

History: En. Sec. 12, Ch. 141, L. 1945; amd. Sec. 5, Ch. 46, L. 1957.

Compiler's Note

The title to Ch. 46, Laws 1957 which amended this section referred to this section as 2-2213. However, the preliminary clause of section 5 of Ch. 46, Laws 1957 correctly identified the section amended.

Amendment

The 1957 amendment added to this section the words "and as additional or alternative penalties, the board may revoke any license issued, and may by injunction restrain the continuance of any operations covered by this act."

Repealing Clauses

Section 6 of Ch. 46, Laws 1957 read

"That sections 3-2206 and 3-2208 of the Revised Codes of Montana, 1947, be, and the same are hereby repealed."

Section 7 of Ch. 46, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE

Section 3-2312. Montana state egg seal.
3-2313. Licensed egg graders.

3-2312. (2634.12) **Montana state egg seal.** The commissioner of agriculture is hereby authorized and it shall be his duty to provide and make available a suitable seal to be known as the Montana state egg seal; and he shall have the power from time to time to establish the price at which said seal shall be sold, but in no case shall the cost of such seal exceed one and three-quarters (1¾) mills per dozen eggs. The proceeds from the sale of said seals shall be expended by the commissioner of agriculture to assist in defraying salaries and expenses incurred in the enforcement of the provisions of this act.

History: En. Sec. 8, Ch. 151, L. 1939; amd. Sec. 1, Ch. 13, L. 1957.

Amendment

The 1957 amendment deleted the words "gummed paper" which appeared between the words "suitable" and "seal" in the first sentence.

Repealing Clause

Section 2 of Ch. 13, Laws 1957 repealed all acts and parts of acts in conflict therewith.

3-2313. (2634.13) **Licensed egg graders.** All wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers must employ only experienced and licensed graders. The fee for grader's license shall be two dollars and fifty cents ($2.50) per year. All candlers and graders must pass an examination as required by the commissioner of agriculture. The license shall expire March 31st each year after the date of issuance.

History: En. Sec. 9, Ch. 151, L. 1939; amd. Sec. 1, Ch. 88, L. 1953.

Amendment

The 1953 amendment raised the fee for a grader's license from $1.00 per year to $2.50 per year.

CHAPTER 24—DAIRIES AND DAIRY PRODUCTS—REGULATION OF PRODUCTION AND SALE

Section 3-2416. Licensing of dairy product plants.
3-2437. Use of certain products in state institutions prohibited.
3-2443. Use of coloring matter regulated.
3-2476. "Ice cream" defined—ingredients—standards.
3-2477. Low fat ice cream—standards.
3-2478. French ice creams—standards.
3-2479. Ice milk—standards.
3-2480. Sherbet—standards.
3-2481. Water ice—standards.
3-2482. Labeling.
3-2483. Animal fat—vegetable fat or oil—labeling.
3-2484. License as required by section 3-2416.
3-2485. Sanitary requirements.
3-2486. Commissioner of agriculture to enforce act and to promulgate rules and regulations.
3-2487. Penalty.

3-2401. (2620.1) **Regulation of dairy industry.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

References

Cited in Brackman v. Kruse, 122 M 91, 199 P 2d 971.

3-2402. (2620.2) **Enforcement of standards.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

References

Cited in Brackman v. Kruse, 122 M 91, 199 P 2d 971.

3-2403. (2620.3) **Statistics and extension work.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2404. (2620.4) **Definitions of terms.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

Cross-Reference

This section insofar as it relates to ice cream products is superseded by Ch. 172, Laws 1953. See sec. 3-2485.

3-2405. (2620.5) **Sampling and testing of dairy products.**

References

Cited in Brackman v. Kruse, 122 M 91, 199 P 2d 971.

3-2413. (2620.13) **Babcock test—revocation of license.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2416. (2620.16) **Licensing of dairy product plants.** It shall be unlawful for any person to operate or carry on any creamery, butter factory, cheese factory or ice cream factory without first securing a license from the department, which license shall expire on the 31st day of December of the year in which it is issued. All licenses which heretofore have been issued by the department to any of the establishments named in this and the following section, shall remain in force until their expiration, and the holder thereof shall not be required to procure a new license under the terms of this act until the expiration or revocation of such former license. The following schedule of license fees shall be charged by the department for all licenses issued under this section:

Creameries and cheese factories manufacturing one hundred thousand pounds (100,000 lbs.) or less of product a year, twenty dollars ($20.00). An addition of five dollars ($5.00) shall be made to the fee for any such license for each one hundred thousand pounds (100,000 lbs.) or any fraction thereof annually produced in excess of the first one hundred thousand pounds (100,000 lbs.).

Ice cream factories manufacturing one thousand (1,000) gallons or less of product a year, ten dollars ($10.00). Those producing more than one thousand (1,000) gallons and less than ten thousand (10,000) gallons

of product a year, twenty dollars ($20.00). An addition of five dollars ($5.00) shall be made to the fee for any such license for each ten thousand (10,000) gallons or fraction thereof annually produced in excess of the first ten thousand (10,000) gallons.

The total year's production of the applicant for a year immediately preceding the application for a license shall determine the amount of any license required by this section; providing that where no past production record is available, the license to be paid shall be determined by the commissioner of agriculture.

History: En. Sec. 16, Ch. 93, L. 1929; amd. Sec. 1, Ch. 134, L. 1953.

Amendment

The 1953 amendment added the words "Ice cream factories manufacturing" at the beginning of the third paragraph; raised the license fee for such factories manufacturing 1,000 gallons or less a year from $5.00 to $10.00, and added the proviso in the last paragraph.

Food⇐3.
36 C.J.S. Food § 12.

3-2418. (2620.18) **Licenses—revocation.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2425. (2620.25) **Sanitary control of dairy products.**

References

Cited in Brackman v. Kruse, 122 M 91, 199 P 2d 971.

Food⇐2.
36 C.J.S. Food § 3.

3-2435. (2620.35) **Repealed.**

Repeal

This section (Sec. 32, Ch. 93, L. 1929), relating to the regulation of imitation butter, was repealed by Sec. 9, Ch. 99, Laws 1953, effective February 27, 1953.

3-2437. (2620.37) **Use of certain products in state institutions prohibited.** No renovated butter, and no condensed milk from which the butter fat has been removed, and a vegetable or other oil has been substituted therefor, shall be used in any of the educational, charitable, hospital, medical, reformatory, or penal institutions maintained by the state of Montana, or which receives from the state of Montana any money, appropriation or financial assistance, whatsoever.

History: En. Sec. 33A by Sec. 8, Ch. 39, L. 1931; amd. Sec. 5, Ch. 99, L. 1953.

Amendment

The 1953 amendment deleted from the beginning of this section the words "No oleomargarines, substitute butter," and the words "or any other substance designed as an imitation of or substitute for butter."

3-2443. (2620.43) **Use of coloring matter regulated.** No person shall coat, powder or color with annato or any coloring matter whatsoever, any product or manufacture made in whole or in part from animal fats or animal and vegetable oils not produced from unadulterated milk or cream by which means such product, manufacture, or compound shall resemble cheese, the product of the dairy; nor shall he have the same in his possession with the intent to sell, nor shall he sell or offer the same for sale. No person or persons shall manufacture, sell or expose for sale any poisonous coloring matter for coloring of dairy food products of any kind, nor shall any person or persons use in dairy products or oleomargarine any

poisonous coloring matter manufactured, sold, offered or exposed for sale within the state, nor shall any person or persons sell, offer or expose for sale any dairy food product or oleomargarine containing such poisonous coloring matter.

Oleomargarine shall be sold in packages or cartons containing net weight of sixteen (16) ounces or one (1) or two (2) pound packages.

For the purpose of the act, any requirements herein contained with respect to the use of the word oleomargarine shall be deemed sufficiently complied with by the word margarine.

History: En. Sec. 38, Ch. 93, L. 1929; amd. Sec. 1, Ch. 98, L. 1941; amd. Sec. 6, Ch. 99, L. 1953.

Compiler's Note

Sections 1, 2, 3, 4, 5 and 7 of Ch. 99, Laws 1953 are compiled as secs. 27-501, 27-503, 27-521, 27-522, 3-2437 and 27-523, respectively.

Amendment

The 1953 amendment deleted from this section the definitions of "retailer," "wholesaler," "person," and "oleomargarine"; inserted the word "matter" after the word "coloring" in the first sentence; added the words "or oleomargarine" wherever it appears in the first paragraph; and added the third paragraph.

References

Cited in Brackman v. Kruse, 122 M 91, 199 P 2d 971.

Food⇐8.
36 C.J.S. Food § 18.

3-2444. (2620.44) Regulating oleomargarine advertising.

References

Cited in Brackman v. Kruse, 122 M 91, 199 P 2d 971.

3-2445, 3-2446. (2620.45, 2620.46) Unconstitutional.

Unconstitutional

These sections (Secs. 40, 41, Ch. 93, Laws 1929 as amended Sec. 1, Ch. 87, Laws 1931), providing a license for the sale of oleomargarine, filled cheese and substitutes for dairy products, were declared unconstitutional in Brackman v. Kruse, 122 M 91, 199 P 2d 971. For new regulatory law, see secs. 27-501 to 27-520.

Constitutionality

Section 3-2445 is unconstitutional as depriving certain persons of their liberty and property without due process of law and denying them the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

Section 3-2445 is unconstitutional as denying certain persons the right to carry on a lawful business without due process of law in violation of Art. II, secs. 3 and 27 of the Montana Constitution. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

Section 3-2445 is unconstitutional in that it assesses a tax which results in unreasonable and arbitrary discrimination in violation of Art. XII, secs. 1 and 11 of the Montana Constitution. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

Section 3-2445 is unconstitutional in that it levies a tax not for a public or government purpose but for the private purpose of prohibiting in large part the sale of oleomargarine in aid of the dairy industry in violation of Art. XII of the Montana Constitution. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 975.

Nature of Law

This act is a regulatory measure and not a revenue measure. Brackman v. Kruse, 122 M 91, 199 P 2d 971, 977.

3-2456. (2620.56) Registry of names and trade marks.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2457. (2620.57) Other licenses for producers of dairy products.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2459. (2620.59) **Penalty for interference with officers of department.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2460. (2620.60) **General penalties for violation of act.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2471. (2620.71) **Wholesale butter and cheese dealer's license.**

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section now refers to the commissioner of agriculture, see sec. 3-101.1.

3-2473 to 3-2475. (2625.1 to 2625.3) **Repealed.**

Repeal

These sections (Secs. 1 to 3, Ch. 120, L. 1931), prohibiting the manufacture and sale of colored oleomargarine or imitation butter, were repealed by Sec. 9, Ch. 99, Laws 1953, effective February 27, 1953.

3-2476. "Ice cream" defined—ingredients—standards. (a) Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (b) of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection (c) of this section, flavored with one or more of the optional flavoring ingredients specified in subsection (d) of this section. Water may be added and one or more of the optional egg ingredients specified in subsection (e) may be used; one or more of the optional stabilizing ingredients specified in subsection (f) may be used; one or more of the optional acidity standardizing ingredients specified in subsection (g) may be used subject to the conditions set forth in subsections (e), (f) and (g), as the case may be.

Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk fat and total milk solids shall be such that the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively of the weight of the finished ice cream; except that when one or more of the optional flavoring ingredients specified in sections 1 (d), (4), (5), (6), (7) or (8) are used, then the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in section 1 (d), (4), (5), (6), (7) or (8), but in no case shall it contain less than 9% of milk fat nor less than 16% of total milk solids. Ice cream shall contain not less than 1.6 pounds of total food solids per gallon and shall weigh not less than four and one-quarter (4¼) net pounds per gallon.

(b) The optional dairy ingredients referred to in subsection (a) of this section are cream, dried cream, butter, butter oil, concentrated milk fat, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed partly skimmed milk,

nonfat dry milk solids, edible dry whey, cheese whey, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, and any of the foregoing products from which all or a portion of the lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis. Harmless optional ingredients may be used to prevent fat oxidation in any of the foregoing optional dairy ingredients in an amount not exceeding .005% of the weight of the butterfat present in any such dairy ingredient.

(c) The optional sweetening ingredients referred to in subsection (a) of this section are sugar, liquid sugar, dextrose, invert sugar (paste or syrup), lactose, corn sugar, dried or liquid corn syrup, maple syrup, maple sugar, honey, brown sugar, malt syrup, dried malt extract, molasses (other than blackstrap).

(d) The optional flavoring ingredients referred to in subsection (a) of this section are (1) natural food flavoring, (2) artificial food flavoring, (3) fruit juice, which may be fresh, frozen, canned, concentrated or dried and which may be sweetened and thickened with one or more of the optional stabilizing ingredients specified in section 1 (b), (4) chocolate, (5) cocoa, (6) fruit which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted or dried and which may be sweetened, thickened with stabilizer, and acidulated with citric, tartaric, malic, lactic or ascorbic acid, (7) nut meats, and (8) confectionery.

(e) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the total weight of egg yolk solids in any such ingredient used singly, or in combination of two or more such ingredients used, is less than the minimum prescribed by section 3 [3-2478] for French ice cream.

(f) The optional stabilizing ingredients specified in subsection (a) of this section are gelatin, algin, extractive of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karava, locust bean gum, gum tragacanth, cellulose gum, guar seed gum, monoglycerides or diglycerides or both of fat forming fatty acids or other harmless stabilizers or emulsifiers; but the total weight of the active material contained in the solids of any such ingredients used singly, or of any combination of two or more such ingredients used, shall be not more than 0.5% of the weight of the finished ice cream.

(g) The following harmless optional ingredients or combination of such ingredients may be added to control viscosity, adjust protein stability and adjust pH of the combined mix ingredients:

(1) Sodium bicarbonate
(2) Magnesium oxide as such or as carbonate or hydroxide
(3) Calcium oxide as such or as hydroxide or sucrate
(4) Sodium citrate
(5) Sodium phosphates

The total of ingredients (1) through (3) shall not exceed 0.1% by weight of the finished mix; nor shall the weight of ingredients (4) and (5) exceed 0.2% by weight of the finished mix.

The percentage of developed lactic acid in the mix prior to the addition of the above listed optional ingredients shall not exceed 0.003% by weight for each one per cent (1%) of milk-solids-not-fat present in the mix.

History: En. Sec. 1, Ch. 172, L. 1953.

Title of Act

An act defining and establishing standards of identity for ice cream, low fat ice cream, French ice cream, frozen custard, French custard ice cream, low fat French ice cream, low fat frozen custard, low fat French custard ice cream, ice milk, sherbet and water ice, and providing for the labeling of such products; providing that frozen food products made in semblance of such dairy products which contain vegetable fat or animal fat other than milk fat shall be manufactured, labeled, and advertised only in accordance with this act; providing that the licensing requirements of section 3-2416, Revised Codes of Montana, 1947, apply hereunder; providing the sanitary, reporting and other requirements of chapter 24 of Title 3, Revised Codes of Montana, 1947, and all acts amendatory thereof, apply to the products covered by this act and the persons, partnerships, corporations, firms and associations which manufacture, store, handle, sell, offer to sell or otherwise deal in any way in any or all of such products; providing the commissioner of agriculture shall administer and supervise the enforcement of this act and setting forth the method to be followed by such commissioner in promulgating rules and regulations; providing penalties for violation of the provisions of this act and of rules and regulations promulgated hereunder; providing for severability of the provisions of this act; repealing all acts and parts of acts in conflict herewith; and providing this act shall be in full force and effect from and after its passage and approval.

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22 Am. Jur. 848, Food, § 57.

3-2477. Low fat ice cream—standards. Low fat ice cream shall conform to the definition and standard of identity prescribed for ice cream by section 1 [3-2476], except that it shall contain not less than 5% but not more than 9.99% of milk fat and not less than 15% total milk solids and except that it shall contain not less than 1.5 pounds of food solids per gallon.

History: En. Sec. 2, Ch. 172, L. 1953.

3-2478. French ice creams—standards. French ice cream, frozen custard, French custard ice cream, low fat French ice cream, low fat frozen custard and low fat French custard ice cream shall conform to the definition and standard of identity prescribed for ice cream or low fat ice cream by sections 1 and 2 [3-2476 and 3-2477], except that one or more of the optional egg ingredients permitted by section 1 [3-2476] shall be used in such quantity that the total weight of egg yolk solids therein shall be not less than 1.4% of the weight of the finished product, except that when any of the optional flavoring ingredients specified in section 1 (d), (4), (5), (6), (7) or (8) [3-2476] is used; in which case the weight of egg yolk solids shall be not less than 1.12% of the weight of the finished product.

History: En. Sec. 3, Ch. 172, L. 1953.

3-2479. Ice milk—standards. Ice milk shall conform in all respects to the definition and standard of identity for ice cream prescribed in section 1 [3-2476], except that it shall contain not less than 2% but not more than 4.99% of milk fat and not less than 11% total milk solids and except that it shall contain not less than 1.3 pounds of food solids per gallon.

History: En. Sec. 4, Ch. 172, L. 1953.

3-2480. Sherbet—standards. Sherbet is the food prepared by freezing, while stirring, a mix composed of water, one or a combination of the optional pasteurized dairy ingredients specified in section 1 (b) [3-2476], one or more of the optional sweetening ingredients specified in section 1 (c) [3-2476], fruit, fruit juice or flavoring as hereinafter provided. It

may contain one or more of the optional stabilizing ingredients specified in section 1 (f) [3-2476] provided the weight of such stabilizer is not more than .5% of the weight of the finished sherbet. The kind and quantity of optional dairy ingredients used shall be such that the total milk solids content shall be not more than 5% by weight of the finished sherbet and the milk fat content shall be not more than 2% by weight of the finished sherbet. It shall contain fruit or fruit juice as described in section 1 (d) (3) [3-2476] and section 1 (d) (6) [3-2476], natural or artificial food flavoring. It may contain citric, tartaric, malic, phosphoric or lactic acid. The acidity of the finished sherbet shall be not less than 0.35% of acid as determined by titrating with standard alkali and expressed as lactic acid. It shall weigh not less than six pounds per gallon.

History: En. Sec. 5, Ch. 172, L. 1953.

3-2481. Water ice—standards. Water ice shall conform in all respects to the definition and standard of identity for sherbet prescribed in section 5 [3-2480] except that it shall not contain any of the optional dairy ingredients and consequently shall not meet the provision respecting total milk solids and butterfat.

History: En. Sec. 6, Ch. 172, L. 1953.

3-2482. Labeling. No person shall label, designate, advertise, offer for sale, or sell any frozen food product as ice cream, low fat ice cream, French ice cream, frozen custard, French custard ice cream, low fat French ice cream, low fat frozen custard, low fat French custard ice cream, ice milk, sherbet or water ice unless such frozen food product conforms to the definition and standard of identity established hereinabove for ice cream, low fat ice cream, French ice cream, frozen custard, French custard ice cream, low fat French ice cream, low fat frozen custard, low fat French custard ice cream, ice milk, sherbet or water ice.

History: En. Sec. 7, Ch. 172, L. 1953.

3-2483. Animal fat—vegetable fat or oil—labeling. Any frozen food product which is made in semblance of or in imitation of the dairy products hereinbefore enumerated which contains, in whole or in part, animal fat (other than milk fat) or vegetable fat or oil in any amount (other than any such fat or oil which is naturally present in any flavoring ingredient specified in section 1 (d) [3-2476]) shall be labeled and designated as a frozen animal fat product or frozen vegetable fat product, or a combination thereof, whichever the case may be. Such vegetable fat product, or animal fat product, or any combination thereof, shall be manufactured from a pasteurized mix. All establishments, creameries, or factories which manufacture, sell or offer to sell such animal fat or vegetable fat products, or any combination thereof, shall be subject to the sanitary, reporting and other regulatory requirements of chapter 24 of Title 3, Revised Codes of Montana, 1947. No representations shall be made or suggested by statement, word, grade designation, design, device, symbol, sound or any combination thereof on any package or container or in or on any advertising media that such animal fat or vegetable fat product, or any combination thereof, is ice cream, French ice cream, frozen custard, French custard ice cream, low fat ice cream, low fat French ice cream, low fat frozen custard, low fat

French custard ice cream, ice milk, sherbet or water ice. The immediate container shall be plainly marked, stamped, labeled or printed in plain, bold-faced letters, with the words, "Animal Fat Product," "Vegetable Fat Product," "Animal-Vegetable Fat Product," or "Vegetable-Animal Fat Product," whichever the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils, except that spices, flavorings and colorings may be designated as spices, flavorings and colorings without naming each.

History: En. Sec. 8, Ch. 172, L. 1953.

3-2484. License as required by section 3-2416. It shall be unlawful for any person, persons, partnership, corporation, firm or association to manufacture any product hereinbefore mentioned, including frozen animal fat or vegetable fat products, or combinations thereof, without first securing a license from the department of agriculture of the state of Montana at the gallonage rate prescribed by section 3-2416, Revised Codes of Montana, 1947, and acts amendatory thereof.

History: En. Sec. 9, Ch. 172, L. 1953.

3-2485. Sanitary requirements. All products hereinbefore mentioned, and all persons, partnerships, corporations, firms and associations which manufacture, store, handle, sell, offer to sell, or otherwise deal in any way in any or all of the products hereinbefore mentioned are hereby specifically declared to be subject to all the sanitary and other requirements prescribed for dairy products and manufacturing plants by chapter 24 of Title 3, Revised Codes of Montana, 1947, and all acts amendatory thereof, save and except the definitions contained in section 3-2404, Revised Codes of Montana, 1947, which are hereby superseded and declared to be of no force or effect insofar as they relate to the products defined herein.

History: En. Sec. 10, Ch. 172, L. 1953.

3-2486. Commissioner of agriculture to enforce act and to promulgate rules and regulations. The commissioner of agriculture is hereby authorized and directed to administer and supervise the enforcement of this act and to promulgate and enforce all reasonable rules and regulations, exclusive of rules and regulations to establish definitions and standards of identity for any of the products hereinbefore mentioned, in aid of and consistent with this act to carry out its purpose. Every such new or amended rule or regulation shall be mailed, postage prepaid and properly addressed, to every person, partnership, corporation, firm or association licensed hereunder at least forty-five (45) days prior to the date on which the rule or regulation shall become effective. Upon application in writing filed at least fifteen (15) days before the effective date of such rule or regulation by any person, partnership, corporation, firm or association licensed hereunder, the commissioner of agriculture shall vacate the effective date of such proposed rule or regulation and hold a public hearing on and take evidence concerning the proposed rule or regulation. Within thirty (30) days after the conclusion of such hearing the commissioner of agriculture shall make written findings and conclusions and a written decision based thereon, determining whether such proposed new or amended rule or regulation shall be promulgated. No new or amended

rule or regulation promulgated following such a hearing and decision shall take effect until ninety (90) days after the date of such decision. The district court of the first judicial district shall have jurisdiction to review, modify or set aside any such decision promulgating a new or amended rule or regulation under this act, upon petition made to it at any time prior to the effective date of such rule or regulation by any person claiming to be adversely affected by such decision.

Rules and regulations promulgated hereunder shall have the force and effect of law, and violation of any of such rules and regulations shall constitute a misdemeanor, punishable as provided in section 12 [3-2487] of this act.

The commissioner of agriculture is further authorized and directed to provide for such periodic inspections and investigations as he may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions or both. The provisions of this act and the rules and regulations issued in connection herewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and adulterated or misbranded articles illegally held or otherwise involved in a violation of this act or of said rules and regulations shall be subject to seizure and disposition in accordance with an order of court.

History: En. Sec. 11, Ch. 172, L. 1953.

3-2487. Penalty. Any person, firm or corporation who either directly or indirectly, or by his or its servant, agent or employee, shall violate any of the provisions of this act, or of the rules and regulations promulgated hereunder, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than two hundred dollars ($200.00) or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment; provided, however, that nothing in this act shall be construed as requiring the commissioner of agriculture to institute criminal prosecution under this act for minor violations whenever he believes the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: En. Sec. 12, Ch. 172, L. 1953.

Separability Clause

Section 13 of Ch. 172, Laws 1953 read: "If any section, subdivision or sentence of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of this act."

Repealing Clause

Section 14 of Ch. 172, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 15 of Ch. 172, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

CHAPTER 26—GRASSHOPPER ERADICATION AND CONTROL

Section 3-2601. Public policy.
3-2602. Cooperation and agreements with Federal Bureau of Entomology and Plant Control.
3-2603. Appropriation.
3-2604. Use of funds.
3-2605. Warrants for claims.
3-2606. Validity of appropriation.

3-2601. Public policy. Whereas, the Federal Bureau of Entomology and Plant Quarantine, Division of Grasshopper Control in cooperation with the state entomologist of the state of Montana, after a survey has reported that certain contiguous areas of range land within the state are heavily infested with grasshoppers, and

Whereas, such infestation is of such magnitude that owners of land are unable to cope with the situation, even with county assistance, and

Whereas, these infested areas, though being sources of potential mass migrations, constitute a grave threat to other sections of the state, and

Whereas, the Federal Bureau of Entomology has set up a pest control program and is authorized to expend the sum of one hundred thousand dollars ($100,000.00) in the state of Montana on a matching basis with the state and counties, the said bureau to make the purchases of bait and other material, provide and operate bait mixers, trucks and personnel for the hauling of bait, and provide the aircraft and personnel for spreading said bait. It is hereby declared to be a public policy that this state and the several counties of the state cooperate with the Federal Bureau of Entomology and Plant Quarantine, Division of Grasshopper Control, in and for the control and/or eradication of grasshoppers in those areas where the infestation constitute a threat.

History: En. Sec. 1, Ch. 76, L. 1949.

Title of Act

An act authorizing the state and counties to take advantage of federal activities and grants in the control and/or eradication of grasshoppers; authorizing any county of the state and the state entomologist to enter into cooperative agreements with the Federal Bureau of Entomology and Plant Quarantine, Division of Grasshopper Control; authorizing expenditure of state and county funds in payment of materials purchased by said federal bureau; providing an appropriation of fifty thousand dollars ($50,000.00); providing the manner of expenditure of said fund; defining the duties of the state entomologist, the board of examiners, and the state auditor; declaring an emergency and repealing all acts in conflict.

Agriculture⇐9.
3 C.J.S. Agriculture § 31.

3-2602. Cooperation and agreements with Federal Bureau of Entomology and Plant Control. The state entomologist of the state of Montana, and the several counties of the state are hereby authorized and empowered to cooperate with the Federal Bureau of Entomology and Plant Control, Grasshopper Division, and enter into agreements therewith for the purpose of controlling and/or eradicating the grasshopper pest in those areas where the infestation of such pest constitutes a threat to the land, and crops in such area, and the said counties are hereby authorized to use funds raised by taxation as now provided by law for the purpose of matching funds made available by said federal bureau and the state of Montana for such purpose.

History: En. Sec. 2, Ch. 76, L. 1949.

Agriculture⇐9.
3 C.J.S. Agriculture § 31.

3-2603. Appropriation. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of fifty thousand dollars ($50,000.00) or so much thereof as may be necessary for the purposes herein set forth.

History: En. Sec. 3, Ch. 76, L. 1949.

3-2604. Use of funds. The funds hereby appropriated are to be used only in cooperation with the several counties of the state in matching funds of the Federal Bureau of Entomology, Division of Grasshopper Control, allocated to the state, in payment of materials purchased and used by said bureau in its program of control and eradication of the grasshopper pest in any area of the state of Montana under any contract or agreement herein authorized.

History: En. Sec. 4, Ch. 76, L. 1949.

3-2605. Warrants for claims. The state auditor is hereby authorized to draw warrants on said fund on verified claims submitted by the state entomologist and approved by the state board of examiners.

History: En. Sec. 5, Ch. 76, L. 1949.

3-2606. Validity of appropriation. Appropriations hereinabove provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 7, Ch. 76, L. 1949.

Emergency—Effective Date

Section 6 of Ch. 76, L. 1949 declared an emergency and provided the act should be in full force and effect from and after its passage and approval. Approved February 25, 1949.

Repealing Clause

Section 8 of Ch. 76, L. 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 27—CONTROL OF NOXIOUS RODENT PESTS

Section 3-2701. Livestock commission to cooperate with department of interior.
3-2702. Expenditures authorized.
3-2703. Appropriation.
3-2704. Purchase of supplies—sale—rodent control fund.

3-2701. Livestock commission to cooperate with department of interior. The state of Montana livestock commission is hereby authorized and directed to cooperate with the United States department of the interior, fish and wildlife service, in the control and destruction of jack rabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals in this state that are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the control of such noxious rodents and related animals; and for this purpose to enter into written agreements with the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of such noxious rodents and related animals, the extent of supervision to be exercised by either or both the state of Montana livestock commission and the fish and wildlife service, and the use and expenditure of funds hereinafter appropriated: Provided, that state of Montana livestock commission, in cooperation with the fish and wildlife service, is authorized also to enter into cooperative agreements with other governmental agencies, and counties, associations, corporations, or individuals when such cooperation is deemed to be necessary to promote the control and destruction of noxious rodents and related animals.

History: En. Sec. 1, Ch. 136, L. 1949.

Title of Act

An act to provide for the control of

noxious rodents and related animals, such as jack rabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals which are injurious to agriculture, other industries, and the public health; to authorize cooperation with the United States Department of the Interior, Fish and Wildlife Service, in the control of such noxious rodents and related animals: and to provide funds to enable the state of Montana live stock commission to carry out the provisions of this act.

Cross-Reference

Control of rodents by county commissioners, secs. 16-1174 to 16-1177.

Agriculture⚖9.
3 C.J.S. Agriculture § 31.
2 Am. Jur. 426, Agriculture §§ 33 et seq.

3-2702. Expenditures authorized. The state of Montana livestock commission is hereby authorized to make such expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, as may be necessary to execute the functions imposed upon it by this act.

History: En. Sec. 2, Ch. 136, L. 1949.

Agriculture⚖2.
3 C.J.S. Agriculture § 6.

3-2703. Appropriation. For the purpose of carrying out the provisions of this act, the sum of twenty thousand dollars ($20,000.00) per annum is hereby appropriated out of the general funds in the state treasury.

History: En. Sec. 3, Ch. 136, L. 1949.

3-2704. Purchase of supplies—sale—rodent control fund. In addition to the expenditures hereinbefore authorized the state of Montana livestock commission is authorized to purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, and counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such cooperators at approximate cost. The receipts from the sale of such supplies and rodent baits shall be credited to a "rodent control fund", which fund is hereby established, and said fund shall be made permanently available and is hereby appropriated for expenditure by the state of Montana livestock commission in the same manner as herein provided in section 2 [3-2702], of this act.

History: En. Sec. 4, Ch. 136, L. 1949.

Repealing Clause

Section 5 of Ch. 136, L. 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 136, L. 1949 provided that the act should be in effect from and after July 1, 1949.

Agriculture⚖2.
3 C.J.S. Agriculture § 6.

CHAPTER 28—RURAL REHABILITATION

Section 3-2801. Trust assets of rural rehabilitation corporation—commissioner of agriculture designated as official to make application.
3-2802. Agreements with United States secretary of agriculture authorized.
3-2803. Montana farm loan fund.
3-2804. Powers of commissioner of agriculture—claims and obligations—property acquired at foreclosure.
3-2805. United States and secretary of agriculture free from liability.

3-2801. Trust assets of rural rehabilitation corporation—commissioner of agriculture designated as official to make application. The commissioner of agriculture is hereby designated as the state official of the state of Mon-

tana to make application to the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Public Law 499, Eighty-first Congress, approved May 3, 1950 [ch. 152, 64 Stat. at L. 98], for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation.

History: En. Sec. 1, Ch. 112, L. 1951.

Compiler's Note

Public Law 499, referred to in this section will be found in the United States Code, Tit. 40, secs. 440 to 444.

Title of Act

An act designating the commissioner of agriculture, the state official of the state of Montana, to make application for the return of the assets of the Montana rural rehabilitation corporation held by the United States; authorizing and directing the commissioner of agriculture of the state of Montana to enter into agreements with the secretary of agriculture of the United States authorizing the said secretary of agriculture to use in the state of Montana all or any portion of said assets or other funds for certain purposes of the Bankhead-Jones Farm Tenant Act; authorizing and empowering the commissioner of agriculture of the state of Montana to administer these assets of the Montana rural rehabilitation corporation pursuant and subject to this act and to the provisions of Public Law 499, Eighty-first Congress of the United States approved May 3, 1950; enumerating certain powers of the commissioner of agriculture of the state of Montana to carry out the provisions of this act; providing that funds not authorized to be administered by the secretary of agriculture of the United States be deposited with the state treasurer of Montana in a special fund; providing for the state treasurer and state auditor to open and maintain special accounts for said special fund; providing that the United States and the secretary of agriculture of the United States shall be free from liability by virtue of transfer of all assets of the Montana rural rehabilitation corporation to the commissioner of agriculture of the state of Montana; authorizing the delegation of certain powers to the secretary of agriculture of the United States when said secretary is administering all or any portion of said assets or other funds; repealing chapter 141 of the laws of the thirty-first legislative assembly of the state of Montana, 1949, and repealing all other acts, or parts of acts in conflict herewith; and providing for the effective date of the act.

3-2802. Agreements with United States secretary of agriculture authorized. The commissioner of agriculture is authorized and directed to enter into agreements with the secretary of agriculture of the United States pursuant to section 2 (f) of the aforesaid act of the congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend and use in the state of Montana all or any part of such trust assets or any other funds of the state of Montana which may be appropriated for such uses for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

History: En. Sec. 2, Ch. 112, L. 1951.

Compiler's Note

The Bankhead-Jones Farm Tenant Act is found in the United States Code as follows: Title I is tit. 7, secs. 1001 to 1005d; Title II is tit. 7, secs. 1007 to 1009; Title IV is tit. 7, secs. 1014 to 1029.

3-2803. Montana farm loan fund. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 2 [3-2802] of this act shall be received by the commissioner of agriculture, and paid by him to the state treasurer for deposit in a special fund to be known as the "Montana Farm

Loan Fund" which fund shall be maintained as a revolving fund for expenditure or obligation by the department of agriculture, labor and industry for the purposes of section 2 [3-2802] of this act, or for use for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may from time to time be agreed upon between the commissioner of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said Public Law 499 [ch. 152, 64 Stat. at L. 98]. The state treasurer and state auditor are hereby directed to open and maintain accounts upon their respective books for said fund.

History: En. Sec. 3, Ch. 112, L. 1951.

Compiler's Note

The department of agriculture, labor and industry referred to in this section is now the department of agriculture, see sec. 3-101.1.

3-2804. Powers of commissioner of agriculture—claims and obligations—property acquired at foreclosure. The commissioner of agriculture is authorized and empowered to:

(a) Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this act or under any mortgage, lease, contract or agreement entered into or administered pursuant to this act and if, in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(b) Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which the commissioner of agriculture has a lien by reason of a judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the commissioner of agriculture under this act, and

(c) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this act.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to section 2 [3-2802] of this act.

History: En. Sec. 4, Ch. 112, L. 1951.

3-2805. United States and secretary of agriculture free from liability. The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the commissioner of agriculture of the state of Montana pursuant to this act.

History: En. Sec. 5, Ch. 112, L. 1951.

Separability Clause

Section 6 of Ch. 112, L. 1951 read "If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

Repealing Clause

Section 7 of Ch. 112, L. 1951 repealed all acts and parts of acts in conflict therewith and Ch. 141, L. 1949.

Effective Date

Section 8 of Ch. 112, L. 1951 provided the act should be in effect from and after its passage. Approved February 28, 1951.

TITLE 4—ALCOHOLIC BEVERAGES

Chapter 1. State Liquor Control Act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-101, 4-102, 4-105, 4-108, 4-114, 4-123, 4-150.
2. State Liquor Control Act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-227, 4-230, 4-236, 4-240, 4-241.
3. Montana Beer Act—licensing sale of beer under supervision of state liquor control board, 4-301, 4-302, 4-307, 4-317 to 4-318, 4-330, 4-333, 4-342, 4-344, 4-347, 4-349, 4-357, 4-358.
4. Montana Retail Liquor License Act—sales by licensees of board, 4-403, 4-407.1, 4-410, 4-412, 4-413, 4-417, 4-425, 4-439.
5. Identification cards, 4-501 to 4-514.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA—LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

Section 4-101. Citation of State Liquor Control Act—declaration of policy—subject matters of regulation under act.
4-102. Definitions.
4-105. Liquor control board—compensation—meetings.
4-108. Salaries of state liquor administrator and other employees—duties of assistant administrator.
4-114. Establishment of state liquor stores—hours—kinds and prices of liquor.
4-123. Individual permits—special permits—fees.
4-150. Sale of liquor unlawful, when—foreign substance in liquor forbidden—possession of liquor, when unlawful.

4-101. (2815.60) **Citation of State Liquor Control Act—declaration of policy—subject matters of regulation under act.** This act may be cited as the "State Liquor Control Act of Montana". It is hereby declared to be the policy of the state of Montana to effectuate and insure the entire control of the manufacture, sale and distribution of liquor within the state of Montana as that term is defined in section 4-102, Revised Codes of Montana, 1947, as amended by chapter 209, laws of the thirty-first legislative assembly of Montana, in, and subject to, the authority of the state of Montana through the Montana liquor control board, in accordance with the provisions of the State Liquor Control Act of Montana (title 4, chapter 1, sections 4-101 through 4-171, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and in accordance with the provisions of the Retail Liquor License Act (title 4, chapter 4, sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended or supplemented).

It is hereby declared to be the policy of the state of Montana to effectuate and insure that the control and regulation by the state of Montana of the manufacture, sale and distribution of beer, as that term is defined in the Montana Beer Act (title 4, chapter 3, sections 4-301 through 4-356, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and regulated thereby, and containing four per centum (4%) of alcohol by weight or less, and the incidents of such manufacture, sale and distribution of such beer, shall continue subject to, and be effectuated exclusively under, the provisions of the Montana Beer Act, as amended or supplemented, and not under the provisions of the State Liquor Control Act of Montana. The terms "beer" and "malt liquor" whenever used as a subject of regulation

and control by and under the State Liquor Control Act of Montana shall refer to, and be construed as applicable only to, beer, ale, porter, stout or other malt liquors containing more than four per centum (4%) of alcohol by weight, and such beer, ale, porter, stout and malt liquors containing more than four per centum (4%) of alcohol by weight, are hereby classified and defined as "liquor" and shall be subject to regulation and control under the terms of the State Liquor Control Act of Montana as amended or supplemented, and not under the provisions of the Montana Beer Act, as amended or supplemented. The said acts herein referred to shall be deemed an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes.

History: En. Sec. 1, Ch. 105, L. 1933; amd. Sec. 1, Ch. 165, L. 1951.

Amendment

The 1951 amendment added all that part of the section following the first sentence.

Construction

This act, before 1951 amendment, and the Montana Beer Act (4-301 to 4-356) are in pari materia and must be construed together, and together with the amendments thereto are all one homogeneous and consistent body of law. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

4-102. (2815.61) **Definitions.** The following words and phrases used in this act shall take the following interpretations:

(a) "Board" means the board created by this act under the name of "Montana liquor control board";

(b) "Club" shall mean any association of individuals for purposes of mutual entertainment and convenience and shall include the premises occupied or used for any such purpose;

(c) "Club license" means a club license granted to a club to sell beer under section 2815.87 [4-133], and "club licensee" means a club which has been granted a license under said section;

(d) "Dentist" means a person duly licensed to practice dentistry under the laws of the state of Montana;

(e) "Druggist" means a duly licensed pharmacist under the laws of the state of Montana;

(f) "State liquor store" means a state liquor store established under this act;

(g) "Hotel" shall mean any place where the public may for a consideration, obtain sleeping accommodations, with or without meals;

(h) "Interdicted person" means a person to whom the sale of liquor is prohibited by an order under this act;

(i) "Liquor" or "liquors" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 2815.11, Revised Codes of Montana, 1935 [4-302] as amended by chapter 30, laws of the twenty-fifth legislative assembly of Montana, 1937, and as permitted to be manufactured and/or sold or transported in and into this state or possessed therein in the manner and under the conditions prescribed in the "Montana Beer Act".

(j) "Municipality" means any city, town, village, hamlet, municipal district (exclusive of any hamlet situate therein), and includes the council of the municipality; and "municipal" shall have a like meaning;

(k) "Member of a club" means a person who, whether as a charter member or admitted in accordance with the by-laws or rules of a club, has become a member thereof, who maintains his membership by the payment of his regular periodic dues in the manner provided by such rules or by-laws and whose name and address are entered on the list of members supplied to the board at the time of the application for a club license under this act, or if admitted thereafter, within ten days after his admission;

(l) "Package" means any container or containers, or receptacle or receptacles used for holding liquor;

(m) "Permit" means a permit for the purchase of liquor issued under this act;

(n) "Physician" means a person duly licensed to practice medicine in the state of Montana;

(o) "Prescription" means a memorandum in the form prescribed by the regulations made under the authority of this act, signed by a physician, and given by him to a patient for the obtaining of liquor pursuant to this act for use for medicinal purposes;

(p) "Public place" includes any place, building, or conveyance to which the public has or is permitted to have access and any place of public resort;

(q) "Residence" means a building, or part of building, or tent, where a person resides but shall not include any part of a building which part is not actually and exclusively used as a private residence, nor any part of a hotel other than a private guest room, nor a club or any part thereof, nor any place from which there is access to a club or hotel except through a street or lane or other open and unobstructed means of access, nor any portion of a building used in part for business purposes unless such portion is separated from the part used for business purposes by a wall or walls having no doors or other means of access opening into such part used for business purposes;

(r) "Regulations" means regulations made by the Montana liquor control board;

(s) "Sale" and "sell" include exchange, barter, and traffic; these terms also include the selling or supplying or distributing, by any means whatsoever, of liquor or of any liquid known or described as beer or near-beer, or by any name whatever commonly used to describe malt or brewed liquor, by any partnership or by any society, association, or club, whether incorporated or unincorporated, and whether heretofore or hereafter formed or incorporated, to any partnership, society, association or club or to any member thereof;

(t) "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution and includes, among other things, brandy, rum, whisky, and gin;

(u) "Vendor" means a person appointed as a vendor under this act;

(v) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits (grapes, apples, etc.); or other agricultural products containing sugar (honey, milk, etc.);

(w) "Malt liquor" means any beverage, other than beer, obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops in drinkable water.

History: En. Sec. 2, Ch. 105, L. 1933; amd. Sec. 1, Ch. 209, L. 1949.

Amendment

The 1949 amendment added all that part of subsection (i) beginning with the words "but shall not mean" and inserted the words "these terms" in subsection (s).

Repealing Clause

Section 2 of Ch. 209, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 209, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 12, 1949.

Effect of 1949 Amendment

The 1949 amendment to this section clarifying the distinction between liquor and beer did not have the effect of impliedly repealing the provision of section 4-170 which prohibits the advertising of beer. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 19 ALR 2d 1108.

4-104. (2815.63) Montana liquor control board, etc.

Amendment

This section, together with the following four sections, was amended by Sec. 1, Ch. 140, Laws 1949 and Sec. 1, Ch. 183, Laws 1951 but no change was made in that portion covered by this section.

References

Cited in State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

4-105. Liquor control board—compensation—meetings. Each of the members of the Montana liquor control board shall receive, as compensation for his official services, the sum of fifteen dollars ($15.00) per diem for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, provided, however, that the maximum amount each member of commission shall receive for per diem shall not exceed one thousand five hundred dollars ($1,500) per annum, together with the traveling expenses while away from home in the performance of the duties of his office. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 1, Ch. 235, L. 1957.

Amendment

The 1957 amendment raised the per diem per day from $10 to $15 and the maximum per diem per annum from $1,000 to $1,500.

4-106. Appointment of state liquor administrator, etc.

Amendment

This section, together with the two preceding and the two following sections, was amended by Sec. 1, Ch. 140, Laws 1949 and Sec. 1, Ch. 183, Laws 1951 but no change was made in that portion covered by this section.

4-107. General powers and duties of the board.

Amendment

This section, together with the three preceding sections and the following section, was amended by Sec. 1, Ch. 140, Laws 1949 and Sec. 1, Ch. 183, L. 1951 but no change was made in that portion covered by this section.

References

Cited in Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

4-108. (2815.63) **Salaries of state liquor administrator and other employees—duties of assistant administrator.** The board shall fix the following salaries of its employees at such sums as it deems advisable, to wit: The salary of the state liquor administrator in a sum not exceeding seven thousand dollars ($7,000.00) per year; the salary of the assistant state liquor administrator in a sum not exceeding the sum of five thousand six hundred dollars ($5,600.00) per annum; the salary of the chief accountant not exceeding the sum of five thousand five hundred dollars ($5,500.00) per annum; the salary of the I.B.M. office superintendent not exceeding the sum of four thousand nine hundred dollars ($4,900.00) per annum; the salary of a vendor of a "Class A" store in a sum not exceeding four thousand seven hundred dollars ($4,700.00) per annum; the salary of one (1) assistant vendor of a "Class A" store in a sum not exceeding four thousand two hundred dollars ($4,200.00); the salary of any other employee of a "Class A" store in a sum not exceeding three thousand nine hundred sixty dollars ($3,960.00) per annum; the salary of a vendor of a "Class B" store in a sum not exceeding four thousand dollars ($4,000.00) per annum; the salary of an assistant vendor and any other employee of a "Class B" store in a sum not exceeding three thousand three hundred dollars ($3,300.00) per annum; the salary or compensation of a vendor of a "Class C" store in a sum not exceeding three thousand six hundred dollars ($3,600.00) per annum; the salary of an assistant vendor and any other employee of a "Class C" store in a sum not exceeding the sum of three thousand dollars ($3,000.00) per annum; the salary of any other employee of the board in the sum not exceeding four thousand eight hundred dollars ($4,800.00) per year. The volume of the individual store sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees.

The assistant state liquor administrator shall exercise such powers and perform such duties as the board may prescribe.

History: En. Sec. 4(part), Ch. 105, L. 1933; amd. Sec. 1(part), Ch. 30, L. 1937; amd. Sec. 1(part), Ch. 243, L. 1947; amd. Sec. 1(part), Ch. 140, L. 1949; Sec. 1(part), Ch. 183, L. 1951; amd. Sec. 2, Ch. 235, L. 1957.

Amendments

The 1949 amendment raised the maximum salaries as follows: Class A store vendor from $3,600 to $3,900; other Class A store employees from $2,500 to $3,000; Class B store vendor from $3,000 to $3,300; other Class B store employees from $2,300 to $2,700; Class C store vendor from $2,500 to $3,000; other Class C store employees from $2,100 to $2,500. It also inserted the clause authorizing the board of take into consideration the volume of business in fixing the salaries of vendors and store employees and added the proviso giving a separate salary for the chief inspector.

The 1951 amendment raised the maximum salaries as follows: State administrator from $5,400 to $6,000; assistant state administrator from $4,500 to $5,000; chief accountant from $4,500 to $5,000; class A store vendor from $3,900 to $4,200; other class A store employees from $3,000 to $3,300; class B store vendor from $3,300 to $3,600; other class B store employees from $2,700 to $3,000; class C store vendor from $3,000 to $3,300; other class C store employees from $2,500 to $2,800; other employees of board from $3,600 to $3,900. It omitted other provisions inserted by the 1949 amendment including a proviso authorizing a salary of $4,200 for the state inspector. It also inserted the clause giving a specific maximum salary for the I. B. M. office superintendent.

The 1957 amendment raised the maximum salaries as follows: State administrator from $6,000 to $7,000; assistant state administrator from $5,000 to $5,600; chief accountant from $5,000 to $5,500; I. B. M. office superintendent from $4,200 to $4,900; Class A store vendor from $4,200 to $4,700; other Class A store employees from $3,300 to $3,960; Class B store vendor from $3,600 to $4,000; assistant vendor and other Class B store employees from $3,000 to $3,300;

Class C store vendor from $3,300 to $3,600; assistant vendor and other Class C store employees from $2,800 to $3,000; other employees of the board from $3,900 to $4,800. The 1957 amendment inserted the clause providing for the salary of one assistant vendor of a Class A store in a sum not exceeding $4,200. In the last sentence of the first paragraph inserted the word "store" between the words "individual" and "sales" and from the second paragraph deleted the words "in the administration of the state liquor control act and Montana Beer Act" which appeared after the word "duties."

Repealing Clause

Section 3 of Ch. 235, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Act approved March 1, 1949, Sec. 2 of Ch. 140, L. 1949 read: "This act shall take effect from and after its passage and approval, and shall be in full force and effect until March 1, 1951, at which time the salaries as specified in Chapter 243, Laws of 1947, shall be again in effect."

Section 2 of Ch. 183, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 1, 1951.

Section 4 of Ch. 235, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

4-112. (2815.67) **Functions, powers and duties of board.**

References

Cited in Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Intoxicating Liquors⇨7.
48 C.J.S. Intoxicating Liquors § 33.

4-113. (2815.68) **Regulations may be made by board, etc.**

References

Cited in Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Intoxicating Liquors⇨7.
48 C.J.S. Intoxicating Liquors § 33.

4-114. (2815.69) **Establishment of state liquor stores—hours—kinds and prices of liquor.** The board shall establish and maintain at the county seats and such other places as the board deems advisable, one or more stores to be known as "state liquor stores", for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars ($450,000) or over during the immediate past fiscal year shall be "class A" stores; stores having done a business of one hundred and forty thousand dollars ($140,000) and up to four hundred and fifty thousand dollars ($450,000) during the immediate past fiscal year shall be "class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars ($140,000) during the immediate past fiscal year shall be "class C" stores; in opening new stores the board shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the board shall employ the necessary help to operate said stores and shall designate the duties to be performed by the employees; the board may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business on Sundays, legal holidays, and election days.

History: En. Sec. 10, Ch. 105, L. 1933; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949.

Amendment

The 1949 amendment provided for the classification of stores according to the volume of business. Prior to the 1949 amendment Class A stores were those in cities with a population of 10,000 or more, Class B stores were those with a population of 3,000 to 10,000, Class C stores were those in all other cities and where two or more stores were established in a city the board was to determine the class from the volume of business.

Repealing Clause

Section 2 of Ch. 162, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 162, L. 1949 provided the act should take effect after its passage and approval. Approved March 2, 1949.

4-123. (2815.77) **Individual permits — special permits — fees.** (1) There shall be two (2) classes of permits under this act:

(a) Individual permits.

(b) Special permits.

(2) Upon application in the prescribed form being made to the board or to any official authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the board, or such official being satisfied that the applicant is entitled to a permit for the purchase of liquor under this act, the board or such official shall issue to the applicant a permit of the class applied for, as follows:

(a) An "individual permit" in the prescribed form may be granted to an individual of the full age of twenty-one (21) years who is not disqualified under this act, entitling the applicant to purchase liquor for beverage, medicinal or culinary purposes, in accordance with the terms and provisions of the permit, and the provisions of this act, and the regulations made thereunder;

(b) A "special permit" in the prescribed form may be granted to a druggist, physician, dentist, or veterinary, or to a person engaged within the state in mechanical or manufacturing business, or in scientific pursuits, requiring liquor for use therein, entitling the applicant to purchase liquor for the purpose named in such "special permit," and in accordance with the terms and provisions of such "special permit" and in accordance with the provisions of this act, and the regulations made thereunder;

(c) A "special permit" in the prescribed form may be granted to a minister of the Gospel, entitling the applicant to purchase wine for sacramental purposes only in accordance with the terms and provisions of such "special permit";

(d) A "special permit" in the prescribed form may be granted, when authorized by the regulations, entitling the applicant to purchase liquor for the purpose named in the permit and in accordance with the terms and provisions of such permit, and of this act, and the regulations made thereunder.

(3) (a) For an "individual permit" under clause (a) of subsection 2 hereof, the fee shall be fifty cents (50¢);

(b) For a "special permit" under clauses (b), (c) and (d) of subsection 2 hereof, the fee shall be fixed and determined by the regulations made hereunder.

(4) No one, who has been convicted of keeping, frequenting or being an inmate of a disorderly house, shall be entitled to a permit until after the expiration of one (1) year from the date of such conviction.

(5) Notwithstanding any other provisions of this act, the board may in its discretion cancel any subsisting permit or refuse or direct any official authorized to issue permits to refuse to issue a permit to any person and no official so directed shall issue any such permit.

History: En. Sec. 18, Ch. 105, L. 1933; amd. Sec. 1, Ch. 3, L. 1937; amd. Sec. 1, Ch. 112, L. 1955.

Amendment

The 1955 amendment made numerous changes and deletions in this section. For section prior to amendment see parent volume.

4-150. (2815.104) **Sale of liquor unlawful, when—foreign substance in liquor forbidden—possession of liquor, when unlawful.** (1) Except as provided by this act, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

(2) No person shall have, keep or sell any beer, or malt liquor, to which has been added any foreign substance.

(3) No person shall have or keep any liquor within the state which has not been purchased from a state vendor of the Montana liquor control board or from a druggist authorized to sell the same; provided, however, that nothing in this act shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed one (1) wine gallon of alcoholic liquor, which liquor shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than one (1) wine gallon of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the board or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this act.

(4) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the board, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee.

History: En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935; amd. Sec. 1, Ch. 66, L. 1957.

Amendment

The 1957 amendment substituted the words "wine gallon" for the word "quart" both times they appear in subd. (3).

Repealing Clause

Section 2 of Ch. 66, Laws 1957 repealed all acts and parts of acts in conflict therewith.

4-155. (2815.109) Repealed.

Repeal

This section (Sec. 50, Ch. 105, Laws 1933), prohibiting the cashing of pay checks at liquor stores, was repealed as Sec. 2815.109, Revised Codes 1935, by Sec. 1, Ch. 53, Laws 1949, effective February 24, 1949.

4-161. (2815.115) Age limit for sale of liquor.

Cross-References

Intoxicating liquor not to be sold or given to minors, secs. 94-35-106, 94-35-106.1.

Possession of beer or liquor by minor, misdemeanor, sec. 94-35-106.2.

Operation and Effect

This section and section 4-237 are in conflict with sec. 1 of Laws 1927, Ch. 122 (11048.1 R. C. M. 1935) and repealed such section by implication. State v. Holt, 121 M 459, 194 P 2d 651; State v. Morrissey, 122 M 246, 199 P 2d 964.

While this section operated as a repeal of section 11048.1 R. C. M. 1935 it was in turn repealed by implication, insofar as it covers the sale of liquor to minors, by Laws 1937, Ch. 84 which so far as the sale of liquor to minors is concerned, in section 18 (4-420), makes such sale by a "person who has not been issued a license" a felony, but by section 11 (4-413) makes such sale by a "licensee or his or her employee" merely a misdemeanor. State v. Holt, 121 M 459, 194 P 2d 651, 660; State v. Morrissey, 122 M 246, 199 P 2d 964.

4-170. (2815.124) Unlawful to canvass for orders for sale, etc.

Advertising of Liquor or Beer

Prohibition of liquor or beer advertising as a reasonable regulation has been uniformly sustained. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 488, 19 ALR 2d 1108.

Beer being included within the term "liquor" in this section under the provisions of section 4-102 as originally enacted, the 1949 amendment to such section that liquor "shall not mean or include beer as that term is defined in the Montana Beer Act" did not impliedly repeal the prohibition in subsec. (3) of this section against beer advertising. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 19 ALR 2d 1108. (See 1951 amendment to section 4-101 making the term "beer" as referred to in this act apply only to that containing more than 4% of alcohol.)

Intoxicating Liquors⊂⇒110.

48 C.J.S. Intoxicating Liquors § 191.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 19 ALR 2d 1114.

CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (Continued)—INTERDICTION AND OTHER ENFORCEMENT PROVISIONS—FINANCE—MISCELLANEOUS

Section 4-227. Reports to state examiner—annual reports—contents.
4-230. When balance sheet and profit and loss statement to be made.
4-236. Declaration of time original regulatory acts became effective.
4-240. License tax on liquor—amount—distribution of proceeds.
4-241. Use of proceeds of license tax.

4-205. (2815.130) Penalty for violations of act.

References

Cited or applied in State v. Holt, 121 M 459, 194 P 2d 651, 656.

4-207. (2815.132) Occupant of premises deemed party to offense, when.

Operation and Effect

This section does not provide punishment for any offense but merely purports to state a rule of evidence, a quasi presumption. State v. Holt, 121 M 459, 194 P 2d 651, 659.

This section is part of the State Liquor Control Act and is applicable only to an offense against that act. State v. Holt, 121 M 459, 194 P 2d 651, 659.

A conviction may be had of the owner of a tavern for a violation of sections 4-330 and 4-345 for sale of beer to minors by a barmaid, although the barmaid was not on the defendant's payroll, because defendant knew that the barmaid oper-

ated the tavern when the manager was gone and the defendant reaped all the benefits of such sales and remained silent. There was ample evidence tending to show at the very least, an ostensible agency. State v. Erlandson, 126 M 316, 249 P 2d 794, 797.

4-223. (2815.148) **District court to have jurisdiction of offenses.**

Application

This section does not give the district courts jurisdiction of criminal actions for a violation of section 4-413. State v. Holt, 121 M 459, 194 P 2d 651, 663.

4-227. (2815.152) **Reports to state examiner—annual reports—contents.** (1) Effective July 1, 1949 the board shall from time to time make reports to the state examiner covering such matters in connection with the administration or enforcement of this act as he may require, and shall annually make a report for the twelve months ending on the thirtieth day of June in the fiscal year in which the report is made, which shall contain—

(a) A statement of the nature and amount of the business transacted by each vendor under this act during the year;

(b) A statement of its assets and liabilities including a profit and loss account, and such other accounts and matters as may be necessary to show the result of operations of the board for the year;

(c) General information and remarks as to the working of the law within the state;

(2) Every annual report made under this section shall be forthwith laid before the legislature if the legislature is then in session, and if not then in session, shall be laid before the legislature within fifteen days after the opening of the next session.

(3) The books and records of the board shall be at all times subject to examination and audit by the state examiner or his duly authorized agents or employees.

History: En. Sec. 92, Ch. 105, L. 1933; amd. Sec. 1, Ch. 86, L. 1949.

Amendment

The 1949 amendment substituted "thirtieth day of June" for "thirty-first day of December."

Intoxicating Liquors⇨7.
48 C.J.S. Intoxicating Liquors § 33.

4-230. (2815.155) **When balance sheet and profit and loss statement to be made.** Effective July 1, 1949 the accounts of the board shall be made up for the fiscal year ending June 30 in each year and at such other times as may be required by the state examiner; and in every case the board shall prepare a balance sheet and statement of profit and loss and submit the same to the state examiner.

History: En. Sec. 95, Ch. 105, L. 1933; amd. Sec. 2, Ch. 86, L. 1949.

Amendment

The 1949 amendment substituted "for the fiscal year ending June 30" for "to the 31st day of December."

Repealing Clause

Section 3 of Ch. 86, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 86, L. 1949 provided the act should be in effect on or after July 1, 1949.

4-233. (2815.159) **Intent and construction of act.**

References

Cited or applied in State v. Holt, 121 M 459, 194 P 2d 651, 656.

4-236. (2815.162) **Declaration of time original regulatory acts became effective.** The State Liquor Control Act, originating as chapter 105, laws of the twenty-third legislative assembly of the state of Montana, 1933, approved March 13, 1933, became effective, in accordance with its terms, upon the ratification of amendment XXI to the Constitution of the United States by proclamation and certification of the secretary of state of the United States of America, on December 5, 1933. The Montana Beer Act, originating as chapter 106, laws of the twenty-third legislative assembly of the state of Montana, 1933, approved March 14, 1933, became effective, in accordance with its terms, upon passage by the congress of the act approved March 22, 1933, 48 U. S. Statutes at Large, 17.

History: En. Sec. 102, Ch. 105, L. 1933; amd. Sec. 2, Ch. 165, L. 1951.

Amendment

The 1951 amendment entirely revised the wording of this section. For section prior to amendment see parent volume.

Repealing Clause.

Section 3 of Ch. 165, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 165, L. 1951 provided the act should be in effect from and after July 1, 1951 at noon.

4-237. (2815.163) **Penalty for violations not otherwise provided for.**

Operation and Effect

This section and section 4-161 are in conflict with sec. 1 of Laws 1927, Ch. 122 (11048.1 R. C. M. 1935) and repealed such section by implication. State v. Holt, 121 M 459, 194 P 2d 651; State v. Morrissey, 122 M 246, 199 P 2d 964.

4-240. License tax on liquor—amount—distribution of proceeds. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of four per centum (4%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the Montana liquor control board. The retail selling price shall be computed by adding to the cost of said liquor the state mark-up as designated by said board. Said four per centum (4%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The Montana liquor control board shall retain the amount of such four per centum (4%) license tax so received in a separate account and shall apportion said license tax to the treasurers of the counties according to the amount of liquor sold by said board to the purchasers in each county. The Montana liquor control board shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (¼) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (¾) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

History: En. Sec. 1, Ch. 217, L. 1957.

Title of Act

An act authorizing and directing the

Montana liquor control board to charge and collect a license tax on all liquor sold by it for the use and benefit of the counties, and incorporated cities and towns of the state of Montana; providing for the payment of said license tax to the treasurers of the various counties of the state where said liquor is sold; providing in addition that said tax shall be charged and collected on all liquor brought into the state and taxed by the Montana liquor control board; requiring the Montana liquor control board to pay quarterly to each county treasurer the proportion of said license tax due each county; providing for the retention of one-fourth of said license tax by each county and providing for the time when and the manner of the apportionment of the remaining three-fourths of said license tax to the incorporated cities and towns in each county; providing for said funds to be deposited to the credit of the general funds of said incorporated cities and towns, and counties, and for said funds to be expended for law enforcement and regulation and control of the sale of liquor and the use thereof; and repealing all acts and parts of acts in conflict herewith.

4-241. Use of proceeds of license tax. The license tax monies when so apportioned shall be deposited to the credit of the general funds of said incorporated cities and towns, and counties and shall be expended by said incorporated cities and towns, and counties for law enforcement and the regulation and control of the sale of liquor and the use thereof.

History: En. Sec. 2, Ch. 217, L. 1957.

Repealing Clause

Section 3 of Ch. 217, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section 4-301. Citation of act—declaration of policy.
4-302. Definitions.
4-307. Powers of board to make and enforce regulations.
4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.
4-317.1. Right of brewers to maintain and operate storage depots—annual licenses.
4-318. Wholesalers' licenses—application for and issuance—subwarehouse—imported beer handled through warehouse or subwarehouse.
4-330. Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.
4-333. Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.
4-342. Denial of application for license or renewal—suspension or revocation—actions.
4-344. Jurisdiction of courts.
4-347. Revenue to be paid to state treasurer—audit of books—disposition of revenue.
4-349. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.
4-357. Annual reports and accountings by board on fiscal year basis.
4-358. Limitations on advertising of beer.

4-301. (2815.10) **Citation of act—declaration of policy.** This act may be cited as the "Montana Beer Act". It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale and possession of "beer", as that term is hereinafter defined in this act and which contains not more than four per centum (4%) of alcohol by weight, shall be controlled and regulated by and under the provisions of the "Montana Beer Act" and the "Montana Retail Liquor License Act". Beer, porter, ale, stout and malt liquors containing more than four per

centum (4%) of alcohol by weight and which are defined as "liquor" by the "State Liquor Control Act of Montana", shall be subject to the regulations and controls provided by the "State Liquor Control Act of Montana", (section 4-101 through section 4-171, inclusive, Revised Codes of Montana, 1947, as amended) and the regulations and controls provided by the "Montana Retail Liquor License Act" (sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended).

History: En. Sec. 1, Ch. 106, L. 1933; amd. Sec. 1, Ch. 166, L. 1951.

Amendment

The 1951 amendment added all that part of the section following the first sentence.

Cross-Reference

Effective date of Montana Beer Act, sec. 4-236.

Construction

This act, before 1951 amendment, and the State Liquor Control Act (4-101 to 4-239) are in pari materia and must be construed together, and together with the amendments thereto are all one homogeneous and consistent body of law. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Operation and Effect

This act and section 4-401 are police regulations enacted pursuant to the police powers of the state. The deeds prohibited are mala prohibita as distinguished from acts mala in se, and the only inquiry is: Has the law been violated? State v. Erlandson, 126 M 316, 249 P 2d 794, 797.

4-302. (2815.11) **Definitions.** In this act, the expression

(a) "Board" as used in this act means the Montana liquor control board, which shall administer the Montana Beer Act, under its provisions, without additional compensation.

(b) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) of alcohol by weight. Beer which is the subject of regulation and control under this, the Montana Beer Act is beer containing not more than four per centum (4%) of alcohol by weight.

(c) "Brewer" means any person having a factory or an establishment adapted for the making of beer.

(d) "Retailer" means any person engaged in the sale and the distribution of beer, either on draught or in bottles, or cans, to the public to be served and consumed on the premises of such retailer, or in the sale or distribution of beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off such premises.

(e) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by the Montana Beer Act.

(f) "This Act" or "this act" means the "Montana Beer Act" as amended or supplemented.

(g) "Vehicle" means any means of transportation by land or by water or by air and includes everything made use of in any way whatever for such transportation.

(h) "Warehouse" or "subwarehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer from such location, as permitted by the Montana Beer Act.

(i) "Wholesaler" means any person having a store or establishment for the sale and distribution of beer in wholesaling or jobbing quantities, or for the sale and distribution of beer in original packages to the public, with intent that such packages shall be delivered or taken away from the premises of such wholesaler in unbroken package for consumption off the premises of such wholesaler.

History: En. Sec. 2, Ch. 106, L. 1933; amd. Sec. 1, Ch. 46, Ex. L. 1933; amd. Sec. 6, Ch. 30, L. 1937; amd. Sec. 2, Ch. 166, L. 1951.

Amendment

The 1951 amendment in definition (a) deleted the words "ex officio and" preceding "without additional compensation", in definition (b) added the last clause of the first sentence, added the second sentence, and deleted the word "other" preceding "similar products", omitted former definitions (d), (e) and (f) defining "club," "club member" and "person" respectively, relettered former definition (g) as (d) and inserted the words "or cans", added the definitions of "storage depot" and "this act", relettered the definition of "vehicle" from (h) to (g), and added the definition of "warehouse" or "subwarehouse."

Application

The definition of beer in this section was applicable throughout the State Liquor Control Act (4-101 to 4-239). Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108. (Decision prior to 1951 amendment.)

4-303. Closing hours for licensed retail beer establishments.

Operation and Effect

The word "closed" means absolutely closed, to close off the front, sides, and rear of that part of a room which is used for the purpose of selling liquor. It makes no difference if any liquor is sold or not; the offense consists in its being open. State v. Perez, 126 M 15, 243 P 2d 309, 312.

4-304. Sale of beer during closed hours forbidden—lawful business, etc.

Operation and Effect

Where the dining room is entirely separate from the bar room with a connecting door, this section is violated by keeping the bar room open after hours and allowing people to remain therein. The restaurant business may be conducted without using the bar room. State v. Perez, 126 M 15, 243 P 2d 309, 312.

4-306. Montana liquor control board to administer act.

References

Cited in Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

4-307. (2815.12) **Powers of board to make and enforce regulations.** The board shall have power:

(a) To prescribe all forms of applications for licenses, forms of licenses, reports, returns, statements and other forms required by this act, or found necessary and proper by the board in the administration thereof.

(b) To make, adopt and promulgate rules and regulations:

(1) Relating to the labeling of containers of beer and the contents thereof, which rules and regulations may be uniform with the rules and regulations of the alcohol tax unit of the bureau of internal revenue of the United States of America, relating to labeling, and not inconsistent with the Montana Beer Act;

(2) Relating to, and prescribing standards of sanitation, cleanliness, and safety for all premises licensed for the consumption of beer on the premises, and the plumbing therein and therefor, toilets and rest room facilities, equipment, supplies, fixtures, beer-dispensing apparatus, and utensils on such premises, or used in connection with the dispensation and consumption of beer thereon; and

(3) Without limitation from the foregoing, such other and further regulations as are necessary and feasible for the purpose of carrying into effect the provisions of the Montana Beer Act. Rules and regulations adopted by the board within the authority of this act, shall have the force and effect of law.

History: En. Sec. 3, Ch. 106, L. 1933; amd. Sec. 2, Ch. 46, Ex. L. 1933; amd. Sec. 3, Ch. 166, L. 1951.

Amendment

The 1951 amendment entirely revised this section which formerly provided in general terms power to do things necessary or advisable to carry into effect the act, to prescribe the forms of applications and licenses and the powers now prescribed by subsec. (b) (3).

References

Cited in Fletcher v. Paige, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

Intoxicating Liquors⇐7.
48 C.J.S. Intoxicating Liquors § 33.

4-316. (2815.21) **Repealed.**

Repeal

This section (Sec. 12, Ch. 106, L. 1933), relating to the labeling of beer bottles and barrels was repealed by Sec. 12, Ch. 166, Laws 1951.

4-317. (2815.22) **Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.** (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-341 (2815.44) of this act and upon presenting satisfactory evidence to the board as required by section 4-310 (2815.15) of this act, shall be licensed by the board in accordance with the provisions of this act and such regulations as may be prescribed by the board, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

(2) In addition to the annual license tax imposed by section 4-341 (2815.44) of this act, a tax of one dollar ($1.00) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311, Revised Codes of Montana, 1947.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951.

Amendment

The 1951 amendment in subsection (1) substituted that part of the first paragraph following "state of Montana" for "may, upon the payment of a fee of seven hundred fifty dollars ($750.00), be licensed by the board in accordance with the provisions of this act, and such regulations as may be prescribed by the board to sell and deliver:", omitted "and malt liquors" which followed "beer" in clause (b), and added clause (c); omitted a subsection (2) which authorized the board to grant or refuse a license in its discretion and also to revoke or suspend a license (for present provisions see sec. 4-342); and in present subsec. (2) which was formerly subsec. (3) substituted "imposed by section 4-341 (2815.44) of this act" for "hereby imposed", inserted the words "of beer" following "every barrel", substituted "any duly licensed brewer who manufactures beer in the state of Montana" for "such licensed brewer", inserted the word "bar-

relage" preceding "tax", substituted "brewer's monthly return or statement" for "return", and inserted the words "to the board" following "required to be made."

4-317.1. Right of brewers to maintain and operate storage depots—annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon the payment to the board of an annual license fee, in addition to all other fees and taxes required to be paid by such brewer, of four hundred dollars ($400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein, and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this act.

History: En. Sec. 6, Ch. 166, L. 1951.

4-318. (2815.23) **Wholesalers' licenses—application for and issuance—subwarehouse—imported beer handled through warehouse or subwarehouse.** Any person desiring to sell and distribute beer as a wholesaler under the provisions of this act shall apply to the board for a license to do so and tender with his application the license fee hereinafter provided for and the board is hereby empowered, authorized and directed to issue one [1] wholesale license for every thirty (30) retail beer licenses figured on the number of retail beer licenses issued in the state to qualified applicants in accordance with the provisions of this act; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall have been a resident of Montana for a period of five (5) years immediately prior to making application, or if said applicant is a Montana corporation said corporation shall have been organized for a period of five (5) years immediately prior to making application; or if applicant is a foreign corporation said corporation shall have been authorized to do business in Montana for a period of five (5) years immediately prior to making application; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each wholesale licensee, which said duplicate license shall at all times be prominently displayed at said subwarehouse; licenses already issued which are in excess of said limitations and which are of issue on the date of the passage and approval of this act, shall be renewable, but no new wholesale beer licenses shall be issued until the number of licenses shall be reduced to within the above limitation.

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said wholesaler shall distribute said beer from such warehouse or subwarehouse; said wholesaler shall keep records at his principal place

of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the board; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the board and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951.

Amendment

The 1951 amendment substituted the first part of the second sentence of the second paragraph to the second semicolon for the words "Each wholesaler shall be entitled to only one wholesale license which license shall be issued for his principal place of business; duplicate licenses may be issued for subwarehouses which said duplicate licenses shall at all times be prominently displayed at said sub-warehouse;", inserted the words "and by him unloaded into his warehouse in Montana or subwarehouse in Montana" in the third paragraph, and in the second clause of such paragraph substituted "such warehouse or subwarehouse" for "his warehouse."

4-330. (2815.33) **Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.** It shall be unlawful for such retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this act.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of twenty-one (21) years;
2. Any intoxicated person or any person actually, apparently or obviously intoxicated;
3. An habitual drunkard; or
4. An interdicted person.

Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor, Indian or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act.

History: En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; amd. Sec. 7, Ch. 166, L. 1951.

Amendment

The 1951 amendment amended that part of this section following the first paragraph. Prior to amendment it merely prohibited the sale or disposition to any person appearing to be in an intoxicated or disorderly condition or to allow such persons on the premises.

Construction

This section as amended by chapter 166, Laws of 1951 did not repeal by implication sections 94-35-106 and 94-35-106.1. State v. Winter, — M —, 285 P 2d 149, 156.

Operation and Effect

A conviction of the owner of a tavern for a violation of this section and section 4-345 may be had when a barmaid at the tavern sold beer to minors, although the barmaid was not on the defendant's pay-

roll, because defendant knew that she acted at times as barmaid and operated the tavern when the manager was gone, and the defendant reaped all the benefits of such sales and remained silent. There was ample evidence tending to show at the very least, an ostensible agency. State v. Erlandson, 126 M 316, 249 P 2d 794, 795.

Intoxicating Liquors⇐119.
48 C.J.S. Intoxicating Liquors § 200.

4-331. (2815.34) **Repealed.**

Repeal

This section (Sec. 32, Ch. 106, Laws 1933 as amended Sec. 12, Ch. 46, Ex. Laws 1933), relating to club licenses, was repealed by Sec. 12, Ch. 166, Laws 1951.

4-333. (2815.36) **Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.** (1) Except as otherwise provided by law, a license to sell beer at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer; provided, that the number of retail beer licenses that the board may issue shall be determined as follows:

(a) The number of retail beer licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail beer licenses to be used in conjunction with retail liquor licenses and not more than one (1) additional retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, two (2) retail beer licenses for the first five hundred (500) inhabitants and one (1) retail beer license for each additional five hundred (500) inhabitants, which said retail beer licenses shall be used in conjunction with retail liquor licenses, and one (1) additional beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, five (5) retail beer licenses for the first two thousand (2000) inhabitants and one (1) retail beer license for each additional one thousand (1000) inhabitants which said retail beer licenses shall be used in conjunction with retail liquor licenses, and two (2) additional retail beer licenses for the first two thousand (2000) inhabitants or major fraction thereof and one (1) additional retail beer license for each additional two thousand (2000) inhabitants which shall not be used in conjunction with retail liquor licenses. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corpo-

rate limits thereof; provided, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail beer licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided, that such limitations shall not prevent the issuance of a nontransferable and nonassignable retail beer license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail beer license may be issued by the board for any premises situated within any zone of such city or town wherein the sale of beer is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail beer license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail beer licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the board in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the board shall determine that the issuance of such license is required by public convenience and necessity.

(2) A retail license to sell beer in the original packages for off-premises consumption only may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer. The number of such licenses that the board may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the board in the exercise of its sound discretion, and the board may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license.

(3) From and after February 1, 1949, any retail license issued pursuant to this act (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and

no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955.

Amendments

The 1949 amendment added those clauses providing for the granting of licenses without limitation to veterans' and fraternal organizations and providing for the automatic cancellation of licenses when not used for 90 days.

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume and 1949 amendment above.

Repealing Clauses

Section 2 of Ch. 165, Laws 1949 and Sec. 3 of Ch. 55, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Section 2 of Ch. 55, Laws 1955 read "That section 4-340 of the Revised Codes of Montana, 1947, be, and the same is hereby repealed."

Effective Date

Section 3 of Ch. 165, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

References

Cited in State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441.

4-334 to 4-336. (2815.37 to 2815.39) **Repealed.**

Repeal

These sections (Secs. 33 to 35, Ch. 106, Laws 1933), relating to club licenses, were repealed by Sec. 12, Ch. 166, Laws 1951.

4-340. (2815.43) **Repealed.**

Repeal

This section (Sec. 44, Ch. 106, L. 1933), relating to the powers of the Montana liquor control board to issue retail beer licenses to retailers outside of cities, towns and villages, was repealed by Sec. 2, Ch. 55, Laws 1955.

4-342. (2815.45) **Denial of application for license or renewal—suspension or revocation—actions.** The board may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under the Montana Beer Act. If the board, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this act, or any rules, or regulations of the board, it may, in its discretion, and in addition to the other penalties herein prescribed, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof, under the procedures herein provided. If the board shall, in its sound discretion, determine to invoke such procedures for the purpose of refusing to grant a license or refusing to grant a renewal thereof to any applicant, or for revoking or suspending any license previously granted, it shall give applicant or licensee, as the case may be, fifteen (15) days' notice in writing of its intended action, addressed and forwarded by registered mail to the applicant or licensee at the address given in the application for license, or upon the existing license, as the case may be, stating generally the basis and reasons

for its intended action and the proposed action. Within said fifteen (15) day period said applicant or licensee may, in cases of intention to refuse to grant a license, or intention to refuse to grant a renewal thereof, institute proceedings in the nature of a writ of review, or, in case of intention to revoke or suspend a license, institute proceedings in injunction, and in any event in the district court of the county wherein the premises of applicant or licensee are located for the purpose of having the intended action of the board judicially reviewed and inquired into for (a) abuse of discretion on the part of the board, (b) failure of the board to observe, or its departure from, or disregard of the applicable law governing the board in the particular circumstances, or (c) for arbitrary or tyrannical action by the board. The board shall in all cases certify to the court its complete record in the matter and the issues shall be heard on the merits by the court upon such record and upon such further legal evidence as the parties may present. If the court in any such proceedings determines that such licensee has, in fact, violated any provisions of this act or any regulations of the board, the court shall dismiss such proceedings, and the board shall proceed to such administrative determination as to it seems proper in the circumstances. Pending determination of such matter on the merits the court may, based upon a showing of undue hardship to a licensee and upon the posting of a proper bond in an amount, and conditioned upon such terms as the court may prescribe in the presence of the surrounding circumstances, stay the effective date of the intended action of the board for such time as to the court may seem proper. If no stay order is issued by the court or any stay order once issued has expired, the board shall issue its order of suspension or of revocation of license or its order denying the license applied for, or renewal thereof. If the court shall, on the other hand, determine that good cause did not exist for the intended action of the board, or that the board abused its discretion, or otherwise acted unlawfully with respect to its intended action, on any of the grounds herein stated, the court shall issue its order and decree accordingly and the board shall comply therewith. Either party to the proceedings in the district court may appeal from its decision to the Supreme Court of the state of Montana, by following the procedures applicable to such appeals in civil actions.

History: En. Sec. 46, Ch. 106, L. 1933; amd. Sec. 8, Ch. 166, L. 1951.

Amendment

The 1951 amendment revised this section in its entirety. For section prior to amendment see parent volume.

Right to hearing before revocation of suspension of liquor license. 35 ALR 2d 1067.

4-343. (2815.46) **Repealed.**

Repeal

This section (Sec. 47, Ch. 106, Laws 1933), relating to appeals to district court from refusal of board to grant or from order revoking or suspending license, was repealed by Sec. 12, Ch. 166, Laws 1951. For present provisions, see sec. 4-342.

4-344. (2815.47) **Jurisdiction of courts.** The district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this act.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16. Ch. 46, Ex. L. 1933; amd. Sec. 9, Ch. 166, L. 1951.

Amendment

The 1951 amendment omitted the first part of this section which prescribed the penalty for a violation of the act.

Construction

This section expressly confers upon the district courts concurrent original jurisdiction with justice courts in prosecutions for violations of the Montana Beer Act. State v. Winter, — M —, 285 P 2d 149, 156.

4-345. (2815.48) **Common nuisance defined—misdemeanor—lien, etc.**

Operation and Effect

A conviction of the owner of a tavern for a violation of this section and section 4-330 may be had when a barmaid at the tavern sold beer to minors, although the barmaid was not on the defendant's payroll, because defendant knew that she acted at times as barmaid and operated the tavern when the manager was gone, and the defendant reaped all the benefits of such sales and remained silent. There was ample evidence tending to show at the very least, an ostensible agency. State v. Erlandson, 126 M 316, 249 P 2d 794, 795.

4-347. (2815.50) **Revenue to be paid to state treasurer—audit of books—disposition of revenue.** All fees, charges, taxes and revenues collected by or under authority of the Montana liquor control board, under the Montana beer act shall be paid over to the state treasurer on or before the tenth day of each and every month who shall deposit said funds to the credit of the state general fund, and the state examiner shall annually audit the books of the board in order to determine that the amount of money received as shown by the books of the board correspond with the books of the state treasurer.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949.

Amendment

The 1949 amendment omitted the reference to penalties and omitted provisions relating to the Montana Beer Act fund 10% of which was to be used for administrative expenses and all over $5,000 was to be transferred to the state general fund whenever the special fund exceeded $10,000. The amendment also provided for an annual instead of quarterly audit of the books.

References

Cited in State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

4-349. (2815.51) **Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.** (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer, or furnish, give, or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars ($15.00) in any calendar year, to any one [1] retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than three hundred (300) square inches in area, and both not in excess of fifty dollars ($50.00) in value, exclusive of installation charges, which signs may bear the name, brand name, trade name, trade mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the

interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined.

(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violations hereof shall be suspended or revoked, as determined by the board in its discretion.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955.

Amendments

The 1951 amendment inserted the words "signs, or any other advertising matter", inserted the word "any" before "other property", added all that part of subsection (a) beginning with the words "in and about the interior or exterior" and in subsection (b) inserted the words "or loan money to, or" and "for or on behalf or any retailer."

The 1955 amendment added subd. (c).

Repealing Clause

Section 2 of Ch. 51, Laws 1955 repealed all acts and parts of acts in conflict therewith.

4-357. Annual reports and accountings by board on fiscal year basis. Effective July 1, 1949, all annual reports and accountings to be compiled or prepared by the Montana liquor control board, under the Montana Beer Act, shall be compiled or prepared on the basis of the state fiscal year of July 1, 1949, to June 30, 1950, and each successive fiscal year.

History: En. Sec. 2, Ch. 121, L. 1949.

Repealing Clause

Section 3 of Ch. 121, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 121, L. 1949 provided the act should be in effect on and after July 1, 1949.

Intoxicating Liquors⚷7.
48 C.J.S. Intoxicating Liquors § 33.

4-358. Limitations on advertising of beer. It shall be lawful to advertise beer containing not more than four per centum (4%) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section 4-349 of this act, and subject to (b) the restrictions on retailers, to wit: No retail licensee under the Montana Beer Act shall display, or permit to be displayed, on the exterior portion or surface of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any prem-

ises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade mark or other designation indicating the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever.

History: En. Sec. 11, Ch. 166, L. 1951.

Repealing Clause

Section 12 of Ch. 166, L. 1951 repealed all acts or parts of acts in conflict therewith and sections 4-316, 4-331, 4-334, 4-335, 4-336 and 4-343.

Effective Date

Section 13 of Ch. 166, L. 1951 provided the act should be effective at noon on July 1, 1951.

Intoxicating Liquors⇐110.
48 C.J.S. Intoxicating Liquors § 191.

CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY LICENSEES OF BOARD

Section 4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.
4-407.1. Notice of application—publication—protest.
4-410. Contents of license—posting—privilege—transfer—expiration.
4-412. Persons disqualified for license.
4-413. Persons to whom liquor may not be sold or given.
4-417. Excise liquor tax—collection.
4-425. Denial of application for license or renewal—suspension or revocation—actions.
4-439. Penalty for violating act—revocation of license.

4-401. Declaration of policy as to retail sale of liquor.

Operation and Effect

This act and section 4-301 are police regulations enacted pursuant to the police powers of the state. The deeds prohibited are mala prohibita as distinguished from acts mala in se, and the only inquiry is: Has the law been violated? State v. Erlandson, 126 M 316, 249 P 2d 794, 797.

Purpose of Act

It is the people of the state of Montana who are to be protected in their "health, welfare and safety" by the act and by the rules and regulations promulgated by the liquor control board and not the people of any other state. Perry v. Luding, 123 M 570, 217 P 2d 207, 214.

References

Cited in Light v. Zeiter, 124 M 67, 219 P 2d 295, 300.

4-402. Definitions.

References

Cited in Perry v. Luding, 123 M 570, 217 P 2d 207, 215; Light v. Zeiter, 124 M 67, 219 P 2d 295, 300.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the

most recent official United States census authorized by congress, to-wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, two (2) retail liquor licenses for the first five hundred (500) inhabitants and one (1) retail liquor license for each additional five hundred (500) inhabitants; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first two thousand (2000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the board in the exercise of its sound discretion; provided that no retail liquor license shall be issued

for any premises so situated unless the board shall find that the issuance of such license is required by public convenience and necessity.

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955.

Amendments

The 1949 amendment added those clauses providing for the granting of licenses without limitation to veterans' and fraternal organizations and providing for the automatic cancellation of licenses when not used for 90 days.

The 1951 amendment added the words "except that licenses issued to licensees who conduct seasonal operations, such as dude ranches, resorts, park hotels, tourist facilities and similar businesses shall not be cancelled in the above manner" at the end of the first sentence.

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume and 1949 and 1951 amendments above.

Repealing Clauses

Section 2 of Ch. 164, Laws 1949; Sec. 2 of Ch. 144, Laws 1951 and Sec. 2 of Ch. 56, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 164, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

Section 3 of Ch. 144, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Operation and Effect

Where hotel and bar were leased for a period of five years at time when there was no quota on liquor licenses and contract provided for return of the property to lessor upon expiration of lease but made no mention of transfer of liquor license, lease could not be reformed in equity to include provision for transfer of liquor license where Quota Law had been enacted prior to expiration of lease. Sullivan v. Marsh, 124 M 415, 225 P 2d 868.

References

Cited or applied in State v. Holt, 121 M 459, 194 P 2d 651, 660; State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441; Perry v. Luding, 123 M 570, 217 P 2d 207, 214; Light v. Zeister, 124 M 67, 219 P 2d 295, 300.

Grant or renewal of liquor license as affected by fact that applicant held such license in past. 2 ALR 2d 1239.

4-407. Application for license—penalty for false statements.

Unnamed Persons Interested in Premises

License issued in name of one person who failed to state in application, that two others, who were ineligible for license, had an interest in the premises was invalid and subject to immediate cancellation and revocation. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

4-407.1. Notice of application—publication—protest. When an application has been filed with the Montana liquor control board for a license to sell liquor at retail, or to transfer such license, as provided in chapter four (4) of volume one (1), of the Revised Codes of Montana of 1947, it shall be the duty of said board to promptly publish once a week for four (4) consecutive weeks in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has made application for such license, and that protests against

the issuance of a license to the applicant will be heard at a time stated in the notice, which shall be at a special or regular meeting of the Montana liquor control board in the city of Helena, Montana. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL LIQUOR LICENSE

Notice is hereby given that on the ——— day of ————————, 19—, one (name of applicant) filed an application for a retail liquor license with the Montana liquor control board, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of ——M, on the ——— day of ————————, 19—, at the office of the Montana liquor control board in Helena, Montana.

Dated———————— Signed ————————————

ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this act be issued if the said Montana liquor control board shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the Montana Retail Liquor License Act will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana liquor control board, an amount sufficient to cover the costs of publishing said notice.

History: En. Sec. 1, Ch. 202, L. 1951.

Title of Act

An act to require the publication of notice of application to sell liquor at retail or to transfer a retail liquor license, under the provisions of chapter 4 of volume 1 of the Revised Codes of Montana of 1947; providing the form of such notice and providing for hearing thereon before the Montana liquor control board; repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 202, L. 1951 repealed all acts and parts of acts in conflict therewith.

Intoxicating Liquors⇐65.
48 C.J.S. Intoxicating Liquors § 146.

4-408. Investigation of application.

References

Cited in Light v. Zeiter, 124 M 67, 219 P 2d 295, 300.

4-409. License to sell liquor in railroad dining and buffet cars.

References

Cited in Light v. Zeiter, 124 M 67, 219 P 2d 295, 300.

4-410. Contents of license—posting—privilege—transfer—expiration. Every license issued under this act shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the board shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated

under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the board or to any peace officer of the state of Montana.

Any license issued under the provisions of this act shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

In the event of a major loss or damage to licensed premises by unforeseen natural causes, or in case of expiration of lease of the licensed premises, or in the event of eviction or increase of rent by the landlord, in case of rented, licensed premises, or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the board for a transfer of the license to a different premises, the board may in its discretion permit a transfer in such cases if it appears to the board that such a transfer is required to do justice to the licensee applying for the transfer. The board shall in no event, nor for any cause, permit a transfer to a different premises where the sanitary, health and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made. Upon a bona fide sale of the business operated under any license the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the board and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the board, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the board. The board shall not in any event permit the transfer of any license beyond the quota area within which such license was originally issued, any such license which is not within a quota area may not be transferred to any premises within a quota area.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the board, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year.

History: En. Sec. 8, Ch. 84, L. 1937; amd. Sec. 1, Ch. 97, L. 1951.

Amendment

The 1951 amendment inserted the words "or other appropriate specific description of location if no street address exists" in the first sentence, substituted the second sentence for a sentence which read "If issued to a partnership the names of the persons conducting the business", inserted provisions relating to peace officers in subject matter of third sentence, substituted the second and third paragraphs

for "Such license shall be signed by the licensee, shall be nontransferable except and only with the consent of the board. Every license issued under the provisions of this act is separate and distinct, and no person, except the licensee therein named, shall exercise any of the privileges granted thereunder, and all licenses are applicable only to the premises in respect to which they are issued," and changed the expiration date of licenses from January first to midnight of June thirtieth.

Repealing Clause

Section 2 of Ch. 97, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 97, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Cross-References

Notice of application for transfer to be published, sec. 4-407.1.

See note to sec. 4-412. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

Assignment of License

An "involuntary" assignment and coerced surrender, enforced by court decree, after making for the parties a contract to which they did not and could not agree, is not authorized. Light v. Zeiter, 124 M 67, 219 P 2d 295, 300.

Complaint in suit for reformation of contract on ground that words "stock and fixtures" in contract for sale of beer and liquor establishment, containing provision for surrender of property in case of default, were intended by the parties to include the beer and liquor licenses, showed plaintiffs had no right in the original licenses which were transferred to purchasers where the several plaintiffs were alleged to have been joint owners, but the original liquor and beer licenses were in the name of only one of them. Light v. Zeiter, 124 M 67, 219 P 2d 295, 303.

Attachment of License

A retail liquor license is subject to attachment. Stallinger v. Goss, 121 M 437, 193 P 2d 810.

Disqualification of Partner

The disqualification of a single partner works a disqualification of all the partners. Light v. Zeiter, 124 M 67, 219 P 2d 295, 302.

Operation and Effect

Where a court decree adjudged that the liquor licenses be transferred to the defendants, but because they were unable under Montana law to hold such licenses, an arrangment was made between the plaintiff and the defendant to transfer the licenses to the plaintiff along with a lease of the premises; such lease and transfer will be upheld where there is consideration. Sears v. Barker, 126 M 101, 244 P 2d 516.

Sheriff's Sale

A retail liquor dealer's license could be purchased by a qualified person at a sheriff's sale and such purchaser could insist that the license so purchased be transferred to him. Stallinger v. Goss, 121 M 437, 193 P 2d 810.

Transfer of Location

Purchaser of a license from a licensee cannot compel liquor control board to consent to transfer of license where he intends to carry on business at a location different from that authorized in the original license. State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441.

Montana liquor control board conformed to legislative directive in refusing to authorize removal of license from premises for which it was granted to another location three doors away on same side of street. State ex rel. Boulds v. Paige, 124 M 353, 224 P 2d 141.

4-411. Limit one license to person—beer license, when required.

References

Cited in Perry v. Luding, 123 M 570, 217 P 2d 207, 214.

4-412. Persons disqualified for license. No license shall be issued by the board to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

3. A person whose license issued under this act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board.

6. A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

7. A person who is not the owner and operator of the business.

History: En. Sec. 10, Ch. 84, L. 1937; amd. Sec. 1, Ch. 76, L. 1945; amd. Sec. 1, Ch. 244, L. 1947; amd. Sec. 1, Ch. 10, L. 1957.

Amendment

The 1957 amendment substituted the words "any state of the United States" for "the state of Montana" in subd. (2) and substituted "one (1) year" for "five (5) years" in subd. (6).

Repealing Clause

Section 2 of Ch. 10, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 10, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 13, 1957.

Disqualified Person Interested in Premises

License issued in name of one person who failed to state in application, that two others, who were ineligible for license, had an interest in the premises, was invalid and subject to immediate cancellation and revocation. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

References

Cited in Light v. Zeiter, 124 M 67, 219 P 2d 295, 300.

4-413. Persons to whom liquor may not be sold or given. No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of twenty-one (21) years.

2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

3. A habitual drunkard.

4. An interdicted person.

5. Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining liquor, beer or wine from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-439 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of liquor, beer or wine to any person in violation of any federal law.

History: En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953.

Amendment

The 1953 amendment added the words "nor any other person" in the first sentence; in subdivision 5 omitted the word "Indian" following the comma after the word "minor" and added the proviso.

Repealing Clause

Section 2 of Ch. 71, Laws 1953, repealed all acts and parts of acts in conflict therewith.

Application

This section applies only to licensees or their employees and to that extent is a special act which must prevail over the provisions of a general law when such

provisions are in conflict. State v. Holt, 121 M 459, 194 P 2d 651, 661.

Entrapment

Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. State v. Parr, — M —, 283 P 2d 1086. (Dissenting opinion, — M —, 283 P 2d 1086, 1090.)

Jurisdiction

The original jurisdiction of an offense defined in this section is in the justices' courts. State v. Holt, 121 M 459, 194 P 2d 651, 662; State v. Morrissey, 122 M 246, 199 P 2d 964.

It is not possible to read into this act the provisions of section 4-223 which gives the district court jurisdiction of criminal actions for violation of the State Liquor Control Act. State v. Holt, 121 M 459, 194 P 2d 651, 663; State v. Morrissey, 122 M 246, 199 P 2d 964.

Legislative Intent

The very next legislature, after the case of State v. Holt, 121 M 459, 194 P 2d 651, dispelled all doubt as to its intent by promptly enacting chapter 143, Laws of 1949 (94-35-106, 94-35-106.1) whereby original jurisdiction of the offense of selling of intoxicating liquor to any minor is expressly conferred upon the district courts of the state. State v. Winter, — M —, 285 P 2d 149, 156.

Operation and Effect

This section repeals by implication that part of section 4-161 relating to sales to minors. State v. Holt, 121 M 459, 194 P 2d 651, 660; State v. Morrissey, 122 M 246, 199 P 2d 964.

Penalty

A defendant cannot be prosecuted under this section and punished as for a violation of former section 94-35-106. State v. Holt, 121 M 459, 194 P 2d 651, 662.

Time of Taking Effect

As chapter 71, Laws of 1953 failed to prescribe or fix a time whereon the act shall take effect it did not take effect until July 1, 1953 by virtue of section 43-507. Hence the provisions of that chapter have no application to an offense committed May 8, 1953 which was prior to the effective date of chapter 71. State v. Winter, — M —, 285 P 2d 149, 155.

Intoxicating Liquors⇦79.
48 C.J.S. Intoxicating Liquors § 114.

4-414. Hours for sale of liquor.

Sufficiency of Complaint

A complaint that alleges "on or about" a certain day of a certain month is sufficient since the precise day is not of the essence of the offense and it is sufficient if the evidence discloses the unlawful sale of liquor on a day other than the date disclosed in the complaint. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856, 858, 859.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 660.

4-417. Excise liquor tax—collection. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of sixteen per centum (16%) of the retail selling price on all liquor so sold and delivered. The Montana liquor control board shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957.

Amendment

The 1957 amendment increased the rate of tax from eight to sixteen per cent.

Repealing Clause

Section 2 of Ch. 180, Laws 1957 repealed all acts and parts of acts in conflict therewith.

4-419. Sale of liquor not purchased from state store forbidden—penalty.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 660.

4-420. Penalty for sale of alcoholic liquor without license.

References

Cited or applied in State v. Holt, 121 M 459, 194 P 2d 651, 660; Perry v. Luding, 123 M 570, 217 P 2d 207, 215; Light v. Zeiter, 124 M 67, 219 P 2d 295, 301.

4-421. Sale of liquor at less than posted price forbidden.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 660.

State power to regulate price of intoxicating liquors. 14 ALR 2d 699.

4-424. Board to make rules and regulations—forms—records.

References

Cited in Perry v. Luding, 123 M 570, 217 P 2d 207, 214.

4-425. Denial of application for license or renewal—suspension or revocation—actions. The board may (1) upon its own motion and shall (2) upon the written, verified complaint of any other person, investigate the action and operation of any retailer licensed under the Montana Retail Liquor License Act. If the board, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this act, or any rules, or regulations of the board, it may, in its discretion, and in addition to the other penalties herein prescribed, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof, under the procedures herein provided. If the board shall, in its sound discretion, determine to invoke such procedures for the purpose of refusing to grant an application for renewal of any license previously issued or for revoking or suspending any such license, it shall give to the licensee fifteen (15) days notice of its intended action, addressed and forwarded by registered mail to the licensee at the address given in the existing license, stating generally the basis and reasons for its intended action and the proposed action. Within said fifteen (15) day period said licensee may, in case of intention to refuse to grant a renewal of a license, institute proceedings in the nature of a writ of review, or, in case of intention to revoke or suspend a license, institute proceedings in injunction, and in any event in the district court of the county wherein the premises of the licensee are located for the purpose of having the intended action of the board judicially reviewed and inquired into for (a) abuse of discretion on the part of the board, (b) failure of the board to observe, or its departure from, or disregard of the applicable law governing the board in the particular circumstances, or (c) for arbitrary or tyrannical action by the board. The board shall in all cases certify to the court its complete record in the matter and the issues shall be heard on the merits by the court upon such record and upon such further legal evidence as the parties may present. If the court in any such proceedings determines that such licensee has, in fact, violated any provisions of this act or any regulations

of the board, the court shall dismiss such proceedings, and the board shall proceed to such administrative determination as to it seems proper in the circumstances. Pending determination of such matter on the merits the court may, based upon a showing of undue hardship to a licensee and upon the posting of a proper bond in an amount, and conditioned upon such terms as the court may prescribe in the presence of the surrounding circumstances, stay the effective date of the intended action of the board for such times as to the court may seem proper. If no stay order is issued by the court or any stay order once issued has expired, the board shall issue its order of suspension or of revocation of license or its order denying the renewal of license. If the court shall, on the other hand, determine that good cause did not exist for the intended action of the board, or that the board abused its discretion, or otherwise acted unlawfully with respect to its intended action, on any of the grounds herein stated, the court shall issue its order and decree accordingly and the board shall comply therewith. Either party to the proceedings in the district court may appeal from its decision to the Supreme Court of the state of Montana, by following the procedures applicable to such appeals in civil actions.

History: En. Sec. 23, Ch. 84, L. 1937; amd. Sec. 1, Ch. 67, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clauses

Section 2 of Ch. 67, Laws 1955 read "That sections 4-426 and 4-427 of the Revised Codes of Montana, 1947, be, and the same are, and each is hereby repealed."

Section 3 of Ch. 67, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Disqualified Person Interested in Premises

License issued in name of one person who failed to state in application, that two others, who were ineligible for license, had an interest in the premises was invalid and subject to immediate cancellation and revocation. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

4-426, 4-427. Repealed.

Repeal

These sections (Secs. 24, 25, Ch. 84, L. 1937), relating to the procedure upon the filing of charges against a licensee and a hearing on such charges were repealed by Sec. 2 of Ch. 67, Laws 1955.

4-428. Officers may examine premises.

References

Cited in Perry v. Luding, 123 M 570, 217 P 2d 207, 215.

4-438. Business in name of licensee—federal permits required.

References

Cited in Perry v. Luding, 123 M 570, 217 P 2d 207, 215.

4-439. Penalty for violating act—revocation of license. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked, or in the discretion of the board suspended temporarily for a time to be determined by the board. Further, if any person under the age of twenty-one (21) is convicted of an offense under

this act he shall be subject to a one hundred dollar ($100.00) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this act, that all such licensees display in a prominent place in his premises a placard as issued by the board stating fully the consequences for violations by persons under the age of twenty-one (21) years of the provisions of this act.

Any person who invites a person under the age of twenty-one (21) years into a public place where liquor is sold and treats, gives or purchases liquor for such person, or permits such person in a public place where liquor is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of twenty-one (21) years to the owner of the liquor establishment, or his or her employee or employees, shall be guilty of a misdemeanor.

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951.

Amendment

The 1951 amendment added the second and third sentences of the first paragraph and added the second paragraph.

Repealing Clause

Section 2 of Ch. 161, L. 1951 repealed all acts or parts of acts in conflict therewith.

References

Cited in State ex rel. Jester v. Paige, 123 M 301, 213 P 2d 441; Perry v. Luding, 123 M 570, 217 P 2d 207, 215; State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856, 858.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

4-441. Limitation on effect of repeal.

Operation and Effect

This section does not make section 4-223 a part of this act. State v. Holt, 121 M 459, 194 P 2d 651, 663.

CHAPTER 5—IDENTIFICATION CARDS

Section 4-501. Definitions.
4-502. Identification card—form.
4-503. File to be kept—inspection.
4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed.
4-505. Montana liquor control board—power to adopt rules and regulations.
4-506. All persons attaining the age of twenty-one (21) years may apply to the county clerk and recorder for an identification card.
4-507. Duties of the county clerk and recorder.
4-508. County clerk and recorder to forward application to the Montana liquor control board for issuance of identification card.
4-509. Montana liquor control board to furnish application forms to county clerk and recorders.
4-510. Fee to be charged.
4-511. Issuance of state liquor permit to person under 21 prohibited.
4-512. Misrepresenting age or falsely procuring or altering identification card.
4-513. Penalty for violations.
4-514. Jurisdiction.

4-501. Definitions. As used in this act the term

(a) "Licensee" means any person, firm or corporation licensed by the state of Montana to sell liquor and/or beer and includes the agents, servants and employees of any such person, firm or corporation;

(b) "Vendor" means the vendor of any state of Montana liquor store and includes all liquor store employees under the immediate supervision of such vendor;

(c) "Beer" means beer as defined, regulated and controlled by the Montana Beer Act (Title 4, chapter 3, sections 4-301 through 4-356, inclusive, Revised Codes of Montana, 1947, as amended or supplemented);

(d) "Liquor" means liquor as defined, regulated and controlled by the Montana Retail Liquor License Act (Title 4, chapter 4, sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and the State Liquor Control Act of Montana (Title 4, chapters 1 and 2, sections 4-101 through 4-239, inclusive, Revised Codes of Montana, as amended or supplemented).

(e) "Permit" means a permit for the purchase of liquor issued pursuant to the State Liquor Control Act of Montana (Title 4, chapters 1 and 2, sections 4-101 through 4-239, inclusive, Revised Codes of Montana, 1947, as amended or supplemented).

History: En. Sec. 1, Ch. 107, L. 1955.

Title of Act

An act providing for an identification card showing evidence of age, which may be accepted by vendors of state liquor stores and licensees holding licenses to sell beer and liquor as evidence of the legal age of persons desiring to purchase beer or liquor; prescribing the form for such identification cards and for the printing and distribution thereof by the Montana liquor control board; providing for the filing of such identification cards by vendors and licensees and authorizing the inspection thereof by peace officers and by members and representatives of the Montana liquor control board; providing that the license of any licensee in possession of an identification card properly completed and signed shall not be suspended or revoked for selling beer or liquor to a person under the age of twenty-one (21) years who has presented such identification card at the time of purchase; prescribing definitions and empowering the Montana liquor control board to adopt regulations to effectuate the purposes of this act; repealing all acts and parts of acts in conflict herewith.

4-502. Identification card—form. Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least twenty-one (21) years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCOHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

—Fill in the Following—

Montana Liquor Permit No._____; Issued at_____

Complete Two or More of the Following:

Social Security Card No._____; Issued at_____Date_____

Birth Certificate issued at_____; Date of birth_____.

Draft Card issued at_____; Date of birth_____

Discharge Papers: Service_____; Issued at_____;

Date of birth_____.

Military Identification Card or Pass: Service_____;
Issued at_____Date_____Age Shown_____
Driver's License: Date_____; Issued at_____;
Age Shown_____.

I hereby represent to_____that I am over the age of twenty-one (21) years, having been born on the_____day of_____, 19__, at_____, and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.

(Witness) _____ (Signature) _____
(Address) _____ (Address) _____

The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed.

History: En. Sec. 2, Ch. 107, L. 1955.

4-503. File to be kept—inspection. The identification card prescribed by this act shall be filed alphabetically by the vendor or licensee at or before the close of business on the day when such card is executed, in a file box containing a suitable alphabetical index. Such cards shall be subject to examination upon request by any peace officer, or by any member or authorized representative of the Montana liquor control board.

History: En. Sec. 3, Ch. 107, L. 1955.

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed. The license of any licensee in possession of an identification card properly completed, signed and filed as provided in this act shall not be suspended or revoked for selling beer and/or liquor to a person under the age of twenty-one (21) years who has presented such identification card at the time of purchase and delivered the same for filing as herein provided.

History: En. Sec. 4, Ch. 107, L. 1955.

4-505. Montana liquor control board—power to adopt rules and regulations. The Montana liquor control board shall have the power to adopt such rules and regulations as it shall deem necessary or advisable to effectuate the purposes of this act.

History: En. Sec. 5, Ch. 107, L. 1955.

Repealing Clause

Section 6 of Ch. 107, Laws 1955 repealed all acts and parts of acts in conflict therewith.

4-506. All persons attaining the age of twenty-one (21) years may apply to the county clerk and recorder for an identification card. All persons attaining the age of twenty-one (21) years may apply to the county clerk and recorder of the county in which the applicant resides for an identifi-

cation card which shall prima facie establish that the applicant has reached the age of twenty-one (21) years.

History: En. Sec. 1, Ch. 190, L. 1957.

Title of Act

An act to provide for the issuance of identification cards to all persons attaining the age of twenty-one (21) years; fixing the fee therefor; providing that the county clerk and recorder accept applications and forward the same to the Montana liquor control board who shall issue such identification cards to qualified applicants; providing for and defining the data which such cards shall contain; providing for penalties for the violation of the provisions of the act; providing effective date of act; and repealing all acts and parts of acts in conflict therewith.

4-507. Duties of the county clerk and recorder. Upon making application to the county clerk and recorder for an identification card, the applicant must apply in person before the county clerk and recorder, who shall ascertain and receive from the applicant:

1. The true and full name of the applicant;
2. The date of birth of the applicant, provided, however, it shall be within the discretion of the officer to require proof of the date of birth with a certified copy of his or her birth certificate;
3. Place of birth of the applicant;
4. The height and weight of the applicant;
5. The color of eyes and hair of the applicant; and
6. A one and one-quarter inch (1¼″) by one and one-half inch (1½″) photograph of the applicant which shall bear a true resemblance to the applicant. It shall be within the discretion of the clerk and recorder to refuse a photograph which does not present a true resemblance of the applicant.

History: En. Sec. 2, Ch. 190, L. 1957.

4-508. County clerk and recorder to forward application to the Montana liquor control board for issuance of identification card. The county clerk and recorder shall forward the application, properly filled in and authenticated, to the Montana liquor control board, and that board shall prepare an identification card upon a laminating machine. The identification card shall set forth all the information contained in the application, together with the photograph, and shall be signed by the chairman of the Montana liquor control board or his designee.

History: En. Sec. 3, Ch. 190, L. 1957.

4-509. Montana liquor control board to furnish application forms to county clerk and recorders. It shall be the duty of the Montana liquor control board to prepare suitable application blanks and cause the same to be distributed to the various county clerk and recorders.

History: En. Sec. 4, Ch. 190, L. 1957.

4-510. Fee to be charged. The county clerk and recorder shall charge and collect a fee of fifty cents ($0.50) from the applicant at the time the application is prepared. This fee shall be transmitted to the Montana liquor control board along with the application and shall be used to defray the cost of administering and executing the provisions of this act. Any surplus shall revert to the general fund of the state of Montana.

History: En. Sec. 5, Ch. 190, L. 1957.

4-511. Issuance of state liquor permit to person under 21 prohibited. It shall be unlawful for any person to issue a state liquor permit to any person under the age of twenty-one (21) years.

History: En. Sec. 6, Ch. 190, L. 1957.

4-512. Misrepresenting age or falsely procuring or altering identification card. It shall be unlawful for any person to fraudulently misrepresent his or her age to any dispenser of intoxicating liquor, or to falsely procure an identification card, or to alter any of the statements contained in the identification card as herein provided for.

History: En. Sec. 7, Ch. 190, L. 1957.

4-513. Penalty for violations. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor which upon conviction, shall be punishable by a fine of five hundred dollars ($500.00) or three (3) months' confinement, or both.

History: En. Sec. 8, Ch. 190, L. 1957.

4-514. Jurisdiction. The district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this act.

History: En. Sec. 9, Ch. 190, L. 1957.

Repealing Clause

Section 10 of Ch. 190 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 190 provided the act should be in full force and effect from and after July 1, 1957.

TITLE 5—BANKS AND BANKING

Chapter 2. Organization and incorporation of banks, 5-208.
9. Examination and supervision — state examiner's fund, 5-904 to 5-906, 5-908, 5-910.
10. General powers and limitations of banks, 5-1047 to 5-1057.
14. Uniform Common Trust Act, 5-1401 to 5-1406.

CHAPTER 2—ORGANIZATION AND INCORPORATION OF BANKS

Section 5-208. Board of directors—qualifications, tenure, and vacancies.

5-208. (6014.14) **Board of directors—qualifications, tenure, and vacancies.** The affairs of the bank shall be managed by a board of directors, not less than three (3) or more than eleven (11) in number, all of whom shall be stockholders of such bank and citizens of the United States, and of whom at least two-thirds (2/3) must be residents of the state of Montana. No person who shall have been convicted of a crime against the banking laws of the United States or of any state of the union shall be elected a director. The directors shall be elected for a term of one (1) year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. In case the election shall not be made on the day fixed for the annual meeting, the corporation shall not thereby be dissolved, but an election may be had at any other time agreeable to the by-laws of the corporation, and the persons so elected shall hold their office until the second Tuesday in January following, or until others are elected and qualified. In case of death or resignation of one or more of said directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election, at which time a director shall be elected to fill out the unexpired term. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office, and will not knowingly violate or permit a violation of any of the provisions of this act; that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. Such oaths shall be made in duplicate, one copy of which shall be transmitted to the superintendent of banks and filed in his office, and one copy shall be kept on file in the office of the bank.

History: En. Sec. 10, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1957.

Amendment

The 1957 amendment substituted "two-thirds (⅔)" for "three-fourths (¾)" in the first sentence.

Effective Date

Section 2 of Ch. 78, Laws 1957 provided the act should be in effect after its passage and approval. Approved March 2, 1957.

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

5-501. (6014.26) **Transfer of shares of stock.**

Rights, duties and liability in connection with transfer of stock of decedent. 7 ALR 2d 1240.

5-513. (6014.38) **Dividends, surplus, losses and bad debts.**

Validity of cancellation of accrued dividends on preferred bank stock. 8 ALR 2d 893.

5-528. (6014.53) **Joint deposits—survivorship.**

References

Cited in State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989, 993.

CHAPTER 9—EXAMINATION AND SUPERVISION—STATE EXAMINER'S FUND

Section 5-904. Payments by counties.
5-905. Payments by cities and towns.
5-906. Payments by county free high schools.
5-908. Payments by banks, investment and trust companies.
5-910. Special examinations and fees.

5-904. (6014.78) **Payments by counties.** For the credit of the state general fund each county of the state, shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year as follows:

Counties having a taxable valuation of five million dollars ($5,000,000.00) or less, three hundred fifty dollars ($350.00);

Counties having a taxable valuation of more than five million dollars ($5,000,000.00), shall pay three hundred fifty dollars ($350.00) plus thirty-five dollars ($35.00) for each million dollars of taxable valuation or fraction thereof in excess of five million dollars ($5,000,000.00).

The maximum fee for any county shall be one thousand two hundred fifty dollars ($1,250.00).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 49, L. 1953.

Amendment

The 1953 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 49, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 49, Laws 1953 provided the act should be in effect from and after July 1, 1953.

5-905. (6014.79) **Payments by cities and towns.** For the credit of the state general fund each city and town of the state shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year, as follows:

Cities and towns having a taxable valuation of fifty thousand dollars ($50,000.00) or less, thirty-five dollars ($35.00);

Cities and towns having a taxable valuation of from fifty thousand dollars ($50,000.00) to one hundred thousand dollars ($100,000.00), forty dollars ($40.00);

Cities and towns having a taxable valuation of from one hundred thousand dollars ($100,000.00) to two hundred thousand dollars ($200,000.00), fifty dollars ($50.00);

Cities and towns having a taxable valuation of from two hundred thousand dollars ($200,000.00) to four hundred thousand dollars ($400,000.00), sixty-five dollars ($65.00);

Cities and towns having a taxable valuation of from four hundred thousand dollars ($400,000.00) to six hundred thousand dollars ($600,000.00), eighty dollars ($80.00);

Cities and towns having a taxable valuation of from six hundred thousand dollars ($600,000.00) to eight hundred thousand dollars ($800,000.00), one hundred dollars ($100.00);

Cities and towns having a taxable valuation of from eight hundred thousand dollars ($800,000.00) to one million dollars ($1,000,000.00), one hundred twenty-five dollars ($125.00);

Cities and towns having a taxable valuation of from one million dollars ($1,000,000.00) to one million two hundred fifty thousand dollars ($1,250,000.00), one hundred fifty dollars ($150.00);

Cities and towns having a taxable valuation of from one million two hundred fifty thousand dollars ($1,250,000.00) to one million five hundred thousand dollars ($1,500,000.00), two hundred dollars ($200.00);

Cities and towns having a taxable valuation of from one million five hundred thousand dollars ($1,500,000.00) to two million dollars ($2,000,000.00), two hundred fifty dollars ($250.00);

Cities and towns having a taxable valuation of from two million dollars ($2,000,000.00) to three million dollars ($3,000,000.00), three hundred dollars ($300.00);

Cities and towns having a taxable valuation of from three million dollars ($3,000,000.00) to four million dollars ($4,000,000.00), three hundred fifty dollars ($350.00);

Cities and towns having a taxable valuation of from four million dollars ($4,000,000.00) to five million dollars ($5,000,000.00), four hundred dollars ($400.00);

Cities and towns having a taxable valuation of more than five million dollars ($5,000,000.00), shall pay four hundred dollars ($400.00) plus thirty-five dollars ($35.00) for each million dollars of taxable valuation or fraction thereof in excess of five million dollars ($5,000,000.00);

The maximum fee for any city shall be one thousand dollars ($1,000.00);

The said fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a city or town within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 48, L. 1953.

Amendment

The 1953 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 48, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 48, Laws 1953 provided the act should be in effect from and after July 1, 1953.

5-906. (6014.80) **Payments by county free high schools.** For the credit of the state general fund, each county free high school shall pay to the state treasurer on or before the first day of July of each year a fee according to the following rates:

County free high schools having a maximum attendance record as shown in the records of the office of the state superintendent of public instruction, according to the following schedule;

All county free high schools having an attendance of two hundred (200) or less, twenty-five dollars ($25.00);

All county free high schools having an attendance in excess of two hundred (200) and not exceeding three hundred (300), thirty-five dollars ($35.00);

All county free high schools having an attendance in excess of three hundred (300) and not exceeding four hundred (400), fifty dollars ($50.00);

All county free high schools having an attendance in excess of four hundred (400) and not exceeding six hundred (600), sixty dollars ($60.00);

All county free high schools having an attendance in excess of six hundred (600) and not exceeding one thousand (1000), seventy-five dollars ($75.00);

All county free high schools having an attendance in excess of one thousand (1000) and not exceeding fifteen hundred (1500), one hundred dollars ($100.00);

All county free high schools having an attendance in excess of fifteen hundred (1500), one hundred fifty dollars ($150.00).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county free high school within the calendar year in which the fee is payable.

That the fees for examining auxiliary funds of a county free high school, when requested by the trustees of the said high school, or deemed necessary by the state examiner, shall be based on the fees as set forth in section 5-910 of the Revised Codes of Montana, 1947.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 50, L. 1953.

Amendment

The 1953 amendment completely rewrote this section. Before amendment it read: "For the credit of said fund, each free county high school shall pay to the state treasurer on or before the first day of July of each year, a fee in the amount of twenty-five dollars ($25.00)."

Repealing Clause

Section 2 of Ch. 50, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 50, Laws 1953 provided the act should be in effect from and after July 1, 1953.

5-908. (6014.82) **Payments by banks, investment and trust companies.** For the credit of said fund, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee, based upon its total assets as shown by the statement to the superintendent of banks on the last call report of the preceding year, according to the following rates:

All banks, investment and trust companies, having total assets up to thirty million dollars ($30,000,000.00) shall pay five cents (5c) per thousand dollars of assets. In no case shall any bank pay less than one hundred dollars ($100.00) nor more than twelve hundred dollars ($1200.00) where their total assets are less than thirty million dollars ($30,000,000.00).

Any bank, investment or trust company having total assets in excess of thirty million dollars ($30,000,000.00) shall pay a flat two cents (2c) for each thousand dollars of assets above thirty million dollars ($30,000,000.00), in addition to the maximum of twelve hundred dollars ($1200.00) as set out in the above paragraph.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953.

Amendment

The 1953 amendment completely rewrote this section changing the basis for the fee from the capital stock of a bank, trust company or investment company to its assets. For section prior to amendment see parent volume.

5-910. (6014.84) **Special examinations and fees.** Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association, credit union or any other office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed necessary, and such special examinations shall be charged for at the rate of thirty dollars ($30.00) a day for each person engaged in the examination plus the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees. All special examination fees or charges so collected by the state examiner and ex officio superintendent of banks and paid to the state treasurer, shall be placed in a special fund to be known as the special examination fund to be drawn upon by the state examiner and ex officio superintendent of banks to defray the actual costs and expenses of such special examinations, but all moneys remaining in such special fund at the end of each current year shall be transferred by the state treasurer to the general fund.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination.

History: En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955.

Amendments

The 1953 amendment substituted the words "thirty dollars ($30.00) a day for each person engaged in the examination plus the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees" for the words "fifteen dollars ($15.00) per day for each examiner employed for the time actually consumed, together with necessary transportation" which appeared in the section as originally enacted.

The 1955 amendment inserted the words "credit union" after the words "building and loan association."

Repealing Clauses

Section 2 of Ch. 58, Laws 1953 and Sec. 2 of Ch. 137, Laws 1955 repealed all other acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 58, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

Section 3 of Ch. 137, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

Section 5-1047. Crediting demand items—dishonor—revocation of credit.
5-1048. Definitions.
5-1049. Agreement may vary act.
5-1050. Bank records—when destruction permitted.
5-1051. Photographic or micro-film reproduction of bank records—admissibility in evidence.
5-1052. Admissibility of photographic copies in evidence—exception when original available.
5-1053. Destruction or reproduction "in regular course of business" defined.
5-1054. Application of preceding sections.
5-1055. Closing on Saturdays authorized—Saturday treated as holiday.
5-1056. Amendment of by-laws to permit Saturday closing—notice.
5-1057. Interest payable at bank on such Saturday may be paid next succeeding business day.

5-1016. (6014.100) Liability on items forwarded.

Right of bank which includes its remittance to correspondent bank amount of a check drawn on itself which is not good, or other uncollectible item, to recall payment by deducting the amount in next remittance to correspondent. 10 ALR 2d 349.

Correspondent bank's liability to owner of collection items where credit originally extended to forwarding bank is cancelled. 10 ALR 2d 462.

Authority of officer or agent to bind bank as guarantor or surety. 34 ALR 2d 299.

Authority of officer or agent of bank to indorse and transfer commercial paper. 37 ALR 2d 505.

Setoff or counterclaim, in action against banks to recover partnership deposit, of bank of individual partner. 39 ALR 2d 301.

5-1043. (6014.127) Time limit on stop payment.

Stipulation relieving bank from, or limiting its liability for disregard of, stop-payment order. 1 ALR 2d 1155.

What conduct by drawee of check, before receipt of stop-payment order, renders order ineffectual. 10 ALR 2d 428.

Validity of contract between corporations as affected by directors or officers in common. 33 ALR 2d 1060.

5-1047. Crediting demand items—dishonor—revocation of credit. In any case in which a bank receives, other than for immediate payment over the counter, a demand item payable by, at or through such bank and gives credit therefor before midnight of the day of receipt, the bank may have until midnight of its next business day after receipt within which to dishonor or refuse payment of such item. Any credit so given, together with all related entries on the books of the receiving bank, may be revoked by returning the item, or if the item is held for protest or at the time is lost or is not in the possession of the bank, by giving written notice of dishonor, nonpayment, or revocation; provided that such item or notice is dispatched in the mails or by other expeditious means not later than midnight of the bank's next business day after the item was received. For the purpose of determining when notice of dishonor must be given or protest made under the law relative to negotiable instruments, an item duly presented, credit for which is revoked as authorized by this act, shall be deemed dishonored on the day the item or notice is dispatched. A bank, revoking credit pursuant to the authority of this act, is entitled to refund of, or credit for, the amount of the item.

History: En. Sec. 1, Ch. 19, L. 1951.

Title of Act

An act relating to the collection, payment and dishonor of demand items by

banks and the revocation of credit for, and payment of such items and to permit and authorize deferred posting of demand items; and for other purposes incident to the practice of deferred posting; and to permit and authorize parties to make such collection agreements as they may elect to make, and for other purposes including variations of this act by agreement.

Bills and Notes⇐409.
10 C.J.S. Bills and Notes § 374.

5-1048. Definitions. For the purposes of this act:

(a) An item received by a bank on a day other than its business day, or received on a business day after its regular business hours or during afternoon or evening periods when it has reopened or remained open for limited functions, shall be deemed to have been received at the opening of its next business day;

(b) The term "credit" includes payment, remittance, advice of credit, or authorization to charge and, in cases where the item is received for deposit as well as for payment, also includes the making of appropriate entries to the receiving bank's general ledger without regard to whether the item is posted to individual customers' ledgers.

History: En. Sec. 2, Ch. 19, L. 1951.

5-1049. Agreement may vary act. The effect of this act may be varied by agreement.

History: En. Sec. 3, Ch. 19, L. 1951.

Repealing Clause

Section 4 of Ch. 19, L. 1951 repealed all acts and parts of acts in conflict with that act.

Effective Date

Section 5 of Ch. 19, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 8, 1951.

5-1050. Bank records—when destruction permitted. Banks shall not be required to preserve or keep their records for a longer period than eleven (11) years next after the first day of January of the year following the time of the making of such records; provided, however, that the following records shall not be destroyed, viz., ledger sheets showing unpaid balances in favor of depositors of any banks. No liability shall accrue against any bank destroying any such records (except records the destruction of which is forbidden hereby) after the expiration of the time provided in this section.

History: En. Sec. 1, Ch. 77, L. 1951.

Title of Act

An act relating to bank records and files and to the admissibility in evidence of entries therein, and to the destruction of bank records after the period fixed by this act and providing that no liability shall follow the destruction of bank records in accordance with this act; and authorizing the use of photostatic, photographic, or micro-film reproductions of records in the regular course of business; and authorizing the admissibility in evidence of secondary evidence as to form, text and contents of the original records, including photostatic, photographic or micro-film reproductions thereof, when made in the regular course of business of any bank, before or after the expiration of said period and repealing all acts and parts of acts in conflict herewith.

Corporations⇐395.
19 C.J.S. Corporations § 988.

5-1051. Photographic or micro-film reproduction of bank records—admissibility in evidence. Banks are hereby authorized to make, at any time, photographic or photostatic copies, or micro-film reproductions of any records or documents including photographic enlargements and prints of micro-films, and to preserve, store, use and employ the same in carrying

on business. In any action or proceedings in which any bank records may be called in question or be demanded of any bank or any officer or employee thereof, a showing that such records have been destroyed in the regular course of business shall be a sufficient excuse for the failure to produce them; and, upon such showing, secondary evidence of the form, text and contents of the original records, including photostatic, photographic or micro-film reproductions thereof (and photographic enlargements and prints of micro-film reproductions), when made in the regular course of business, shall be admissible in evidence in any court of competent jurisdiction or in any administrative proceeding. Any photostatic, photographic or micro-film reproductions (including enlargements of the latter) made in the regular course of business, of any original files, records, books, cards, tickets, deposit slips, or memoranda which were in existence at the effective date of this act shall be admissible in evidence in proof of the form, text and content of any said originals which may be destroyed in the regular course of business after the effective date of this act.

History: En. Sec. 2, Ch. 77, L. 1951.

Evidence⇐359, 380.
32 C.J.S. Evidence § 714.

5-1052. Admissibility of photographic copies in evidence—exception when original available. Any photostatic or photographic or micro-film reproductions (including enlargements of the latter) of any original records or files of any bank, whether in the form of an entry or entries in a book, or any other form of record, shall be admissible in evidence in any court of competent jurisdiction in proof of an act, transaction, occurrence or event, when shown to be made in the regular course of business of the bank. But nothing contained in this act shall be construed to authorize the use of secondary evidence in administrative or court proceedings when original records are in existence and available for use in accord with the rules of evidence as set forth in the Code of Civil Procedure.

History: En. Sec. 3, Ch. 77, L. 1951.

5-1053. Destruction or reproduction "in regular course of business" defined. Destruction in the regular course of business shall include destruction at any time after making such reproductions; and reproductions made in the regular course of business shall include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

History: En. Sec. 4, Ch. 77, L. 1951.

5-1054. Application of preceding sections. The provisions of this act shall be applicable to all records in existence at the time of the passage of this act, and to all records originating after said date; and such provisions of this act shall apply to all banks organized under the laws of the state of Montana; and, also, to all national banks located in the state of Montana, as far as applicable to such national banks.

History: En. Sec. 5, Ch. 77, L. 1951.

Repealing Clause

Section 6 of Ch. 77, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 77, L. 1951 provided that the act should be in effect from and after twelve o'clock noon meridian on July 1, 1951.

5-1055. Closing on Saturdays authorized—Saturday treated as holiday. Any bank, which term for the purposes of this act shall mean any corporation as defined in section 5-102, Revised Codes of Montana, 1947, including commercial banks and trust companies, as more particularly defined in sections 5-104, 5-105 and 5-106, Revised Codes of Montana, 1947, and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays, and any Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act, authorized, required or permitted to be performed at or by, or with respect to any bank as herein defined, including any national bank or national banking association, and any federal reserve bank, on a Saturday, may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday, or from the nonopening of any bank on any Saturday under the authority of this act, for the transaction of business.

History: En. Sec. 1, Ch. 124, L. 1955.

NOTE.—See enumeration of legal holidays for banks which close on Saturdays in section 19-107 as amended by Ch. 209, Laws 1955.

Title of Act

An act permitting banks as defined by sections 5-102, 5-104, 5-105, trust companies as defined by section 5-106, of the Revised Codes of Montana, 1947, and national banks, or national banking associations, and any federal reserve bank, doing business in the state of Montana, to remain closed on Saturdays, at the election of any said banks, trust companies and national banks, or national banking associations, and any federal reserve bank, and providing that any Saturday on which a bank remains closed, shall be, with respect to such banks, a holiday and not a business day; and that any act authorized, required or permitted to be performed at or by any bank on a Saturday, may be performed on the next succeeding business day, without liability of any kind, or loss of rights of any kind which shall result from such closings on Saturday; and providing that banks may amend their by-laws to provide for Saturday closing under this act, and that any and all sections of the Codes of Montana, and session laws of said state, and any and all acts in conflict with the right of closing on Saturday, shall be repealed hereby.

5-1056. Amendment of by-laws to permit Saturday closing—notice. Any bank, as herein defined, and any national bank or national banking association, and any federal reserve bank, may, at any time enact or amend by-laws to provide for its banking hours or business days, or to change its banking hours or business days, including remaining closed, or closing, on any Saturdays, at any regular or special meeting of its board of directors. Any such bank enacting a by-law or amending any by-law with respect to such subject-matter shall give reasonable notice to the public of the enactment of a new by-law, or amendment of by-laws, by (a) posting an announcement in the lobby of the bank, incorporating the text of the by-law, or of the amended by-law, and advising of the date the same becomes effective, or (b) by mailing a copy of such notice to each of the bank's customers as of the date of the adoption of such by-law or amendment; and in addition to posting or mailing, by publishing such notice not less than once in each week, for two (2) weeks, in any newspaper of general circulation in the county wherein such bank has its office, and, in any event, such notice, whether posted and published, or mailed and published, shall be

given at least fourteen (14) days in advance of the effective date of the by-law, or amended by-law.

History: En. Sec. 2, Ch. 124, L. 1955.

5-1057. Interest payable at bank on such Saturday may be paid next succeeding business day. Where, by the terms of any note or obligation, interest is payable to a bank on any Saturday upon which a bank is closed pursuant to the authority of this act, interest payable to such bank on any such Saturday may be paid in the amount due on such Saturday on the next succeeding business day with the same effect as if paid to such bank on such Saturday.

History: En. Sec. 3, Ch. 124, L. 1955.

Repealing Clause

Section 4 of Ch. 124, Laws 1955 read "All provisions of the Revised Codes of Montana, 1947, as amended or supplemented, and all acts or parts of acts, and all session laws in conflict with the permissive authority extended by this act to enable banks to close or remain closed on Saturdays, shall be, and the same are hereby repealed."

CHAPTER 14—UNIFORM COMMON TRUST ACT

Section 5-1401. Common trust fund authorized.
5-1402. Accounting.
5-1403. Uniformity in interpretation.
5-1404. Short title.
5-1405. Severability.
5-1406. Application of act.

5-1401. Common trust fund authorized. Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust fund, if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, and if in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment: Provided, that any bank or trust company qualified to act as fiduciary in this state, which is not a member of the federal reserve system, shall, in operation of such common trust fund, comply with the rules and regulations as made from time to time by the state examiner and ex-officio superintendent of banks and he is hereby authorized and empowered to make such rules and regulations as he may deem necessary and proper in the premises.

History: En. Sec. 1, Ch. 64, L. 1955.

Title of Act

An act relating to common trust funds; and the creation thereof by banks and trust companies qualified to act as fiduciary, and to make uniform the law with reference thereto.

Compiler's Note

Except for the proviso in the above section this act is the Uniform Common Trust Fund Act approved by the National Conference of Commissioners on Uniform State Laws in 1938 and adopted by Arizona, Arkansas, California, Colorado, Florida, Idaho, Kansas, Michigan, Mississippi, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia and Wisconsin.

5-1402. Accounting. Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not

required to render a court accounting with regard to such funds; but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

History: En. Sec. 2, Ch. 64, L. 1955.

5-1403. Uniformity in interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 64, L. 1955.

5-1404. Short title. This act may be cited as the Uniform Common Trust Act.

History: En. Sec. 4, Ch. 64, L. 1955.

5-1405. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. Sec. 5, Ch. 64, L. 1955.

5-1406. Application of act. This act shall apply to fiduciary relationships in existence at the time this act takes effect or thereafter established.

History: En. Sec. 7, Ch. 64, L. 1955.

Repealing Clause

Section 6 of Ch. 64, Laws 1955 repealed all acts or parts of acts which are inconsistent with the provisions of this act.

TITLE 6—BONDS AND UNDERTAKINGS

Chapter 4. Public works contractor's bond, 6-404.
5. Public bidder's bond, 6-501.

CHAPTER 1—OFFICIAL BONDS OF STATE OFFICERS

6-101. (464) Bonds of state officers.

Public officer's bond as subject to forfeiture for malfeasance in office. 4 ALR 2d 1348.

CHAPTER 2—OFFICIAL BONDS OF COUNTY OFFICERS

6-201. (466) Official bonds of county officers.

Public officer's bond as subject to forfeiture for malfeasance in office. 4 ALR 2d 1348.

CHAPTER 3—GENERAL PROVISIONS RELATIVE TO OFFICIAL BONDS

6-311. (480) Extent of sureties' liability—construction of bonds.

Operation and Effect

Where a bond is given by an officer such bond would also cover such officer where he holds over until his successor is appointed and qualified. State v. Swanberg, — M —, 299 P 2d 446, 454.

Validity of bond as affected by provision for post-mortem payment or performance. 1 ALR 2d 1228.

Extent of liability on fidelity bond renewed from year to year. 7 ALR 2d 946.

6-320. (489) Liability of officers and sureties.

Liability on bond of police or other peace officer for defamation. 13 ALR 2d 902.

What period of limitation governs in an action against a public officer and the surety on his official bond. 18 ALR 2d 1176.

Release of one of joint and several defalcating tortfeasors as releasing insurer which was surety on fidelity bond of each. 35 ALR 2d 1122.

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

Section 6-404. Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds.

6-404. (5688.44) Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds. The bond mentioned in section 6-401 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the state of Montana, except in cases of cities and towns, in which case such municipality may, by general ordinance, fix and determine the amount of such bond, and to whom such bond shall run; provided, that the same shall not be for a less amount than twenty-five per centum (25%) of the contract price of any such improvement, and may designate that the same shall be payable to such city or town and not to the state of Montana. All such persons mentioned in said section 6-401 shall have a right of action in his or her or their own name or names, on any bond furnished under the terms of this

act for work done by such laborers or mechanics and for provender, materials, supplies, provisions or goods supplied and furnished in the prosecution of such work or the making of such improvements; provided, that such persons shall not have any right of action on such bond for any sum whatever, unless within ninety (90) days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer or body action [acting] for the state, county or municipality or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality or other public body, city, town or district, a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of ———— Dollars (here insert the amount) against the bond taken from ——— (here insert the name of the principal and surety or sureties upon such bond) for the work of ———— (here insert a brief mention or description of the work concerning which said bond was taken).

(Here to be signed) ————————————"

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the prevailing party shall be entitled to recover in addition to all other costs, attorneys' fees in such sum as the court shall adjudge reasonable; provided, however, that no attorneys' fees shall be allowed in any suit or action brought or instituted before the expiration of thirty (30) days following the date of filing of the notice hereinbefore mentioned; and provided further, that any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith; and provided further, that nothing herein referred to with reference to the giving of such notice within ninety (90) days from and after completion of the contract and acceptance of the work shall be construed to prevent or delay the payment of monies due the contractor under the terms and conditions specified in his contract.

History: En. Sec. 4, Ch. 20, L. 1931; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957.

Amendment

The 1957 amendment substituted "ninety (90) days" for "thirty (30) days" in the first paragraph and added the second "and provided further" clause at the end of the section.

CHAPTER 5—PUBLIC BIDDER'S BOND

Section 6-501. Bids accompanied by covenant of indemnity—contents—bidder's security—money, checks or bonds—forfeiture.

6-501. Bids accompanied by covenant of indemnity—contents—bidder's security—money, checks or bonds—forfeiture. In all cases where (a) the state of Montana, or any department (including the state purchasing department, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof, or (b) any county, or other political subdivision of this state, or (c) any municipal corporation or authorized subdivision thereof, or (d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana (any and all thereof being herein referred to as a "public authority" or "obligee") is authorized by law to solicit bids, tenders or proposals for public works, improvements or undertakings of any kind, or for the purchase of commodities, goods, or property, or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes or any other forms of indebtedness of any such public authority, the respective executive, administrative or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid, or consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified, for the performance of such covenant. The advertisement, request, or solicitation for bids or offers shall distinctly specify that all bidders, offerors, tenderers or contractors shall,

(a) In any case where bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder shall be awarded the contract the bidder will, within the time required, as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; otherwise, the bidder will pay unto the public authority the difference in money between the amount of the bid of the said bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities or services, as the case may be, if the latter amount be in excess of the former, but in no event shall the bidder's liability or the liability of the surety of such bidder, exceed the penal sum stated in the solicitation or advertisement for bids, which sum shall be represented by the money posted or stated in the security instrument or bid bond; or

(b) In any case where the bids are solicited for the purchase and sale of any forms of indebtedness of such public authority, expressly covenant that the money or bank instrument accompanying the bid, in the sum specified by the public authority, shall be kept and retained by the public authority as liquidated damages for failure to consummate the

purchase of such forms of indebtedness as may be awarded on acceptance of bid, and in compliance with the terms thereof.

In no event shall the bidder's liability, or the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, or be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond. The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by any bidder failing or refusing as aforesaid, in any case where such sum or sums are fixed by statute for bid security; otherwise, it shall in all cases specify the sum which it may deem reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract, or consummate the purchase of indebtedness, as the case may be.

In all cases under category (a) the bidder, offeror, or tenderer shall accompany any bid with either (1) lawful moneys of the United States, or (2) with a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana, or by any banking corporation incorporated under the laws of the state of Montana, or (3) a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana; and in all cases under category (b) the bidder shall accompany the bid with the security described in (1) or (2) above. The moneys or, in lieu of moneys, any of such bank instruments or bid bonds shall be payable directly to the public authority soliciting or advertising for bids.

If, in any instance, one or more bids be accepted, or if a sale of any form of indebtedness is ordered, or if a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract, or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid, and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned, and become immediately liable on the bid bond but not in excess of the penal sum therein stated. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted. The advertisement, request or other solicitation for bids or offers shall distinctly specify that lawful moneys of the United States, or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks, as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor, shall constitute compliance with the requirement for bid security. But nothing herein contained shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract, or excuse compliance with any requirements for performance bonds, at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

History: En. Sec. 1, Ch. 174, L. 1951.

Title of Act

An act requiring that in all cases where the laws of this state authorize the solicitation of bids or tenders for public works, improvements or other undertakings, or for the purchase of goods, commodities or

property, or for the procurement of technical or special services on a bid basis, or for the sale and purchase of bonds, debentures, notes or any other forms of indebtedness of or for the state of Montana, or for any department, board or institution thereof, or for any county or municipal corporation therein, or for any other public authority organized under the laws of this state, the respective officers authorized to solicit bids or tenders in any case shall require that the bidder shall indemnify, and covenant to indemnify any such public authority against the failure or refusal of the bidder to enter into any contract awarded to the bidder or to consummate the purchase of any forms of indebtedness as the case may be, and shall accompany any bid with security for performance of such covenant; prescribing the conditions of such covenant in various cases and prescribing that such bid security shall consist of either (1) lawful money of the United States or (2) of cashier's checks, bank money orders, bank drafts or certified checks in any case drawn and issued by banks in the state of Montana, or (3) of a bid bond of a surety company authorized to do business in the state of Montana, payable to the public authority in such amounts as may be fixed by law or by such public authority and prescribing the conditions for forfeiture of bid security or the return thereof and the limits of liability upon bid security.

Effective Date

Section 2 of Ch. 174, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 1, 1951.

Indemnity⊂4.

42 C.J.S. Indemnity § 4.

43 Am. Jur. 786, Public Works and Contracts, § 43.

TITLE 7—BUILDING AND LOAN ASSOCIATIONS

Chapter 1. Laws regulating the operation of building and loan associations, 7-101. 7-102, 7-125.

CHAPTER 1—LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

Section 7-101. Purpose—definition.
7-102. Articles of incorporation—contents.
7-125. Duties of superintendent of banks.

7-101. (6355.1) **Purpose—definition.** A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security, shall be known in this act as a building and loan association or a savings and loan association, and shall be under the supervision of the state examiner and ex-officio superintendent of banks, whose duty it shall be to enforce all laws with respect thereto. The members of a building and loan association shall be its shareholders, stockholders, borrowers or purchasers of real estate under contract. Such associations shall have continual succession and shall be organized under the provisions of this act. Wherever in this act the name building and loan association is used the same shall apply to and comprehend savings and loan associations organized under this act.

History: En. Sec. 1, Ch. 57, L. 1927; amd. Sec. 1, Ch. 187, L. 1945; amd. Sec. 1, Ch. 68, L. 1949.

Amendment

The 1949 amendment inserted the words "or a savings and loan association" in the first sentence and added the last sentence.

Repealing Clause

Section 2 of Ch. 68, L. 1949 repealed all acts and parts of acts in conflict therewith.

Generally, 9 Am. Jur. 97, Building and Loan Association, §§ 1 et seq.

Authority of officer of building and loan association to indorse and transfer commercial paper. 37 ALR 2d 510.

7-102. (6355.2) **Articles of incorporation — contents.** Whenever any number of persons, not less than five (5), shall desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate, and shall include the following:

1. The name of the association. The name shall not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words "building and loan association" or "savings and loan association" shall form a part of the name, and no corporation not organized under this act shall be entitled to use a name embodying said combination of words; provided, that the associations now existing may continue their present names;

2. The principle office, or place of business of the association shall be within this state;

3. The amount of its capital stock and the number of shares into which the same shall be divided; such capital stock shall be divided into shares having a par value of one hundred dollars ($100.00).

4. A provision that such association is organized under this act for the purposes herein expressed;

5. The names and residences of the persons who subscribed and acknowledged the said declaration, a majority of whom shall be citizens of this state, and shall thereafter be called incorporators.

History: En. Sec. 2, Ch. 57, L. 1927; amd. Sec. 1, Ch. 67, L. 1949.

Amendment

The 1949 amendment inserted the words "or savings and loan association" in subsection 1.

9 Am. Jur. 101, Building and Loan Association, §§ 6 et seq.

Authority of officer of building and loan association to indorse and transfer commercial paper. 37 ALR 2d 510.

7-117. (6355.16) **Requirements of transfer in certain cases.**

Building and Loan Associations⇐10.
12 C.J.S. Building and Loan Associations § 24.

Rights, duties and liability in connection with transfer of stock of decedent. 7 ALR 2d 1240.

7-125. (6355.24) **Duties of superintendent of banks.** The superintendent of banks shall examine all building and loan associations doing business in this state at least once a year. Also, whenever ten per cent (10%) of the subscribed stock of any association files a written application with the superintendent of banks, requesting him to make a special examination of any association, he shall make such examination forthwith, and the expense of the examiner making such examination shall be paid by the association examined, and the examiner's finding to be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this act.

History: En. Sec. 23, Ch. 57, L. 1927; amd. Sec. 1, Ch. 81, L. 1955.

Amendment

The 1955 amendment in the second sentence inserted the words "a special" before the word "examination" the first time it appears and between the words "examination" and "shall" deleted the words "including living expenses and transportation, together with a fee of fifteen dollars ($15.00) per day for each day actually consumed in the examination" and deleted a proviso clause which appeared at the end of this section.

Repealing Clause

Section 2 of Ch. 81, Laws 1955 repealed all other acts and parts of acts in conflict therewith.

TITLE 8—CARRIERS AND CARRIAGE

Chapter 1. Motor carriers—license and regulation, 8-104, 8-111, 8-111.1, 8-127.
2. Pipe line carriers of oil—regulation, 8-201, 8-202, 8-204 to 8-207.

CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

Section 8-104. Rates—reasonableness—schedule to be fixed by board—filing of schedule.
8-111. Hearing to consider applications—notice—matters considered—manner of conducting hearings.
8-111.1. Time for hearing and issuance of finding, order or decision.
8-127. Additional fees covering motor carriers.

8-101. (3847.1) Definition of terms.

Cross-Reference

Bus lines operated by cities or towns, secs. 11-1019, 11-1020.

Carrier-passenger relationship as between railroad and express company employee. 36 ALR 2d 1412.

8-104. (3847.4) Rates—reasonableness—schedule to be fixed by board—filing of schedule. All fares, rates and charges made for any service rendered or to be rendered in the transportation of persons or property by any class A or class B motor carriers, or in connection therewith, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared unlawful. The board of railroad commissioners is authorized to make for each class A and class B motor carrier doing business in this state, a schedule of specific reasonable fares, rates and charges for the transportation of persons and property in this state, and authority to make schedules shall include the power of classification of all freight. A class A or class B motor carrier transporting either persons or property within the state of Montana may decrease its fares, rates or charges for services provided by filing with the board of railroad commissioners of the state of Montana its proposed schedule of fares, rates and charges, whereupon the said board must, within five (5) days after the receipt of same, give due and sufficient notice to the public and give notice by mail to all competitive class A or class B motor carriers. The said proposed schedule of rates, fares and charges shall be effective thirty (30) days from the date of said filing of said proposed schedule with the board, providing no complaint is received regarding said proposed schedule of rates by said board. If, within thirty (30) days after the date of said filing of said schedule of proposed rates, fares and charges, a complaint is received regarding the proposed schedule of fares, rates or charges, the said board will set the same for public hearing at which hearing the duty will be upon the carrier proposing the said schedule of rates to prove the necessity therefor. It will be possible for any person whose interests will be adversely affected to file such a complaint with the said board, or for the board to set the matter for public hearing upon its own motion. The board also shall have authority to fix different rates or schedules of rates for different motor carriers, of the same or different classes, and for different routes and different parts of the same route of any motor carrier. The board shall from time to time and as often as circumstances may

require, change and revise such schedule. Every class A and class B motor carrier shall file with the board its schedule of tariffs showing all effective rates, fares, charges, and classifications for the transportation of persons and property in this state, or for any service in connection therewith; and no time schedule, tariff, rate or classification shall be changed or altered without the written consent of the board, except as otherwise provided herein.

History: En. Sec. 4, Ch. 184, L. 1931; amd. Sec. 1, Ch. 262, L. 1955.

Amendment

The 1955 amendment added the third, fourth, fifth and sixth sentences; in the beginning of the seventh sentence inserted the word "also" between the words "board" and "shall" and in the last sentence substituted the word "of" for "or" between the words "schedule" and "tariffs" and added the words "except as otherwise provided herein."

Repealing Clause

Section 2 of Ch. 262, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 262, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

8-105. (3847.5) **Order of board required for discontinuance of service.**

Right of public utility to discontinue line or branch on ground that it is unprofitable. 10 ALR 2d 1121.

8-108. (3847.8) **Certificate required of class A motor carriers, etc.**

Automobiles⇐77, 82.
60 C.J.S. Motor Vehicles § 82.
Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 ALR 2d 883.

8-109. (3847.9) **Certificate required of class B motor carriers, etc.**

Automobiles⇐77, 82.
60 C.J.S. Motor Vehicles § 82.
Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 ALR 2d 883.

8-110. (3847.10) **Certificate required of class C motor carriers, etc.**

Automobiles⇐77, 82.
60 C.J.S. Motor Vehicles § 82.
Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 ALR 2d 883.

8-111. (3847.11) **Hearing to consider applications—notice—matters considered—manner of conducting hearings.** Upon the filing of such application by a class A or class B or class C motor carrier, the board shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after such filing. The board shall cause a copy of such petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the board might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the state highway commission, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the state highway commission, and the governing board or boards of any such county, town or city into or through which such route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to such proceedings, and may offer

testimony for or against the granting of such certificate. If after hearing upon application for a certificate, the board shall find, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the board shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the board shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. Provided, however, that an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the board that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the board that public convenience and necessity do not require such proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over said route or in said territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require such motor carrier operation.

Provided further that any investigation, inquiry or hearing which the board has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the board, or by and before any agent or examiner of the board designated for the purpose by the board, and every finding, order, or decision made by a member of the board, or agent or examiner of the board so designated, together with a statement in writing of the reasons therefor which statement must be included in such finding, order or decision, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office, shall be, and be deemed to be the finding, order or decision of the board; provided also, that any agent or examiner of the board designated as aforesaid, shall have power to administer oaths, examine witnesses and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931; amd. Sec. 1, Ch. 101, L. 1955.

Amendment

The 1955 amendment in the second paragraph inserted the words "together with a statement in writing of the reasons therefor which statement must be included in such finding, order or decision," between the words "designated," and "pursuant."

Repealing Clause

Section 2 of Ch. 101, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 101, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

In General

Evidence supported the granting of a certificate of public convenience and necessity for the transportation of petroleum products in bulk as a carrier. H. F. Johnson, Inc. v. Board of Railroad Comrs., 128 M 76, 270 P 2d 990.

8-111.1. Time for hearing and issuance of finding, order or decision. All applications for certificates of public convenience and necessity as class A, class B, or class C carriers filed by motor carriers before the board of railroad commissioners must be set for hearing at a date and time certain, which said date of hearing must be not more than sixty (60) days after the date of filing of said application before said board, and the board must issue its finding, order or decision on said application and the evidence presented in support thereof at the time of said hearing within ninety (90) days from and after the said date of the filing of said application.

History: En. Sec. 1, Ch. 102, L. 1955.

Title of Act

An act to provide that the board of railroad commissioners of the state of Montana must set for hearing all applications by motor carriers for certificates of public convenience and necessity and issue orders thereon within certain specified times.

Repealing Clause

Section 2 of Ch. 102, Laws 1955 repealed all acts and parts of acts in conflict therewith.

8-116. (3847.16) **Annual fee for motor carriers, etc.**

Constitutionality

In determining the constitutionality of the fees levied on interstate carriers it is of no consequence that the state has seen fit to levy two exactions, under this section and section 8-127, rather than to combine them into one. Aero Mayflower Transit Co. v. Board of Railroad Comrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, aff'g 119 M 118, 172 P 2d 452.

The tax imposed on carriers by this section and also by section 8-127 does not violate the commerce clause of the United States Constitution. Aero Mayflower Transit Co. v. Board of Railroad Comrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, aff'g 119 M 118, 172 P 2d 452.

8-127. (3847.27) **Additional fees covering motor carriers.** In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity or permit issued by the board of railroad commissioners, shall between the first and fifteenth days of January, April, July and October of each year, file with the board of railroad commissioners a statement showing the gross operating revenue of such carrier for the preceding three (3) months of operation, or portion thereof, and shall pay to the board a fee of one-half (½) of one (1) per cent of the amount of such gross operating revenue; and in the event that such carrier operates in interstate commerce, the gross operating revenue of such carrier within this state shall be deemed to be all the revenue received from business beginning and ending within this state, and a proportion based upon the proportion of the mileage within this state to the entire mileage over which the business is done of revenue on all business passing through, into or out of this state; provided, however, that the minimum fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the Motor Carrier Act shall be thirty dollars ($30.00) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the Motor Carrier Act shall be fifteen dollars ($15.00); provided, however, that the minimum annual fee provided by this section shall not apply to either new or used vehicles operated under their own power where such vehicle is being delivered to a dealer and will only be transported once.

History: En. Sec. 2, Ch. 100, L. 1935; amd. Sec. 2, Ch. 73, L. 1947; amd. Sec. 1, Ch. 162, L. 1951.

Amendment

The 1951 amendment added the last proviso.

Repealing Clause

Section 2 of Ch. 162, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 162, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Constitutionality

The flat minimum of $15 fixed by this section (being the only part of this section before the United States Supreme Court for decision) did not violate the commerce clause of the United States Constitution. Aero Mayflower Transit Co. v. Board of Railroad Comrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, aff'g 119 M 118, 172 P 2d 452.

In determining the constitutionality of the fees levied on interstate carriers it is of no consequence that the state has seen fit to levy two exactions, under this section and section 8-116, rather than to combine them into one. Aero Mayflower Transit Co. v. Board of Railroad Comrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, aff'g 119 M 118, 172 P 2d 452.

CHAPTER 2—PIPE LINE CARRIERS OF OIL—REGULATION

Section 8-201. Common carriers of oil defined.
8-202. Pipe lines public utilities—jurisdiction.
8-204. Establishment of rates—hearing—complaints.
8-205. Railroad commissioners may require connections—facilities—rules.
8-206. Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.
8-207. Discrimination prohibited—establishment of rates.

8-201. (3848) **Common carriers of oil defined.** Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the state of Montana, for the transportation of crude petroleum or the products thereof to or for the public for hire, or engaged in the business of transporting crude petroleum or the products thereof by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum or the products thereof, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum or the products thereof, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum or the products thereof as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil field or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof,

within this state, of crude petroleum or the products thereof, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R. C. M. 1921; amd. Sec. 1, Ch. 190, L. 1955.

Amendment

The 1955 amendment inserted the words "or the products thereof" each time they appear after the word "petroleum."

8-202. (3849) **Pipe lines public utilities—jurisdiction.** It is declared that the operation of these pipe lines, to which this act applies, for the transportation of crude petroleum or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum or the products thereof, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum or the products thereof, using in connection with such business a pipe line of the class subject to this act to transport the crude petroleum or the products thereof so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R. C. M. 1921; amd. Sec. 2, Ch. 190, L. 1955.

Amendment

The 1955 amendment inserted the words "or the products thereof" each time they appear after the word "petroleum."

8-204. (3851) **Establishment of rates — hearing — complaints.** The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroluem or the products thereof by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten (10) days' and not more than thirty (30) days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipe line or pipe lines

affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R. C. M. 1921; amd. Sec. 3, Ch. 190, L. 1955.

Amendment

The 1955 amendment inserted the words "or the products thereof" in the first sentence.

8-205. (3852) **Railroad commissioners may require connections—facilities—rules.** Every common carrier as above defined shall exchange crude petroleum tonnage or petroleum products tonnage with each like common carrier, and the board of railroad commissioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum or the products thereof of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum or the products thereof except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of railroad commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil or the products thereof tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R. C. M. 1921; amd. Sec. 4, Ch. 190, L. 1955.

Amendment

The 1955 amendment inserted the words "or the products thereof" each time they appear after the word "petroleum"; inserted "or petroleum products tonnage" after the word "tonnage" near the beginning of the section and in the third sentence substituted the words "crude oil or the products thereof" for the word "oil."

8-206. (3853) **Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.** Such common carriers of crude petroleum or the products thereof shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Montana shall require them to make reports and may investigate their

books and records kept in connection with such business. The board of railroad commissioners of Montana shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum or the products thereof owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum or the products thereof on hand of any particular pipe line; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The board of railroad commissioners of Montana shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R. C. M. 1921; amd. Sec. 5, Ch. 190, L. 1955.

Amendment

The 1955 amendment inserted the words "or the products thereof" each time they appear after the word "petroleum."

8-207. (3854) **Discrimination prohibited—establishment of rates.** No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum or the products thereof produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petroleum or the products thereof than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand (3,000) barrels of petroleum or the products thereof in any one day.

History: En. Sec. 7, Ch. 8, Ex. L. 1921; re-en. Sec. 3854, R. C. M. 1921; amd. Sec. 6, Ch. 190, L. 1955.

Amendment

The 1955 amendment inserted the words "or the products thereof" each time they appear after the word "petroleum."

Separability Clause

Section 7 of Ch. 190, Laws 1955 read "If any of the provisions of this act shall

be held unconstitutional, or for any reason shall be held void, such holding shall not have the effect to nullify the remaining parts or provisions of this act, but the parts not so held to be void shall nevertheless remain in full force and effect."

Repealing Clause

Section 8 of Ch. 190, Laws 1955 repealed all acts or parts of acts in conflict therewith.

8-208. (3855) Repealed.

Repeal

This section (Sec. 8, Ch. 8, Ex. L. 1921), relating to the power of the board of railroad commissioners of Montana to make and enforce rules and regulations for the prevention of actual waste of oil, was repealed by Sec. 24, Ch. 238, Laws 1953, effective April 1, 1953. For present law, see secs. 60-124 to 60-145.

Section 14 of Ch. 238, Laws 1953 (60-137) keeps in effect all rules and regulations of the board of railroad commissioners pertaining to matters embraced in the new act and not in conflict therewith. Section 15 of Ch. 238, Laws 1953 (60-138) substitutes the oil and gas conservation commission for the board of railroad commissioners in all contracts, etc. pertaining to matters embraced in the new act. Section 16 of Ch. 238, Laws 1953 transfers the records of the board of railroad commissioners pertaining to matters embraced in the new act to the commission.

CHAPTER 4—CARRIERS OF PERSONS, PROPERTY AND MESSAGES—DUTIES AND OBLIGATIONS

8-405. (7815) General duties of carriers.

Carriers⇐202.

13 C.J.S. Carriers § 640.

Carrier's liability to person in street for purpose of boarding its car. 7 ALR 2d 549.

Open door as ground for liability of carrier for injury to passenger falling or alighting from vehicle. 7 ALR 2d 1427.

Liability of carrier for injury to passenger due to improper lighting. 8 ALR 2d 233.

Liability of motorbus carrier to passenger injured through slipping and falling in alighting from vehicle. 9 ALR 2d 938.

Liability of carrier for injuries to persons boarding vehicle for social or other purposes in connection with passengers. 11 ALR 2d 1075.

Death or injury to occupant of airplane from collision or near collision with another aircraft. 12 ALR 2d 677.

Limitation of liability for personal injury by air carriers. 13 ALR 2d 337.

8-406. (7816) Vehicles.

Construction and application of regulations respecting type or condition of automobile used in transportation of passengers for hire. 7 ALR 2d 1266.

Contributory negligence of passenger alighting from improperly lighted vehicle. 8 ALR 2d 242.

Contributory negligence of passenger injured through fall while alighting from motorbus. 9 ALR 2d 945, 952, 953, 957.

Intoxication of person injured or killed as affecting applicability of last clear chance doctrine. 26 ALR 2d 308.

Liability of carrier to one injured by article thrown from conveyance by passenger. 35 ALR 2d 788.

8-408. (7818) Treatment of passengers.

Civil liability for insulting or abusive language not amounting to defamation. 15 ALR 2d 108.

Liability of carrier to passenger for injury due to crowded condition of motor bus, or pushing or crowding of passengers therein. 26 ALR 2d 1219.

Attempts to board moving car or train as contributory negligence or assumption of risk. 31 ALR 2d 931.

Availability of last clear chance doctrine to defendant. 32 ALR 2d 543.

Liability of motor carrier to passenger for injury assertedly caused by failure to heat conveyance adequately. 33 ALR 2d 1358.

Duty of railroad to passengers to keep vestibule of car free from debris or foreign substances other than snow or ice. 34 ALR 2d 360.

Carrier's liability to passenger injured by landslide, or the like, obstructing tracks or derailing train. 34 ALR 2d 835.

Liability of lessor motor carrier for lessee's torts or nonperformance of franchise duties. 34 ALR 2d 1121.

Carrier-passenger relationship as between railroad and express company employee. 36 ALR 2d 1412.

Racial segregation by common carriers. 38 ALR 2d 1190.

8-411. (7821) Care and diligence required of carriers.

Carrier's liability for loss through weight deficiency of goods shipped. 39 ALR 2d 325.

8-414. (7824) Delivery of freight.

Shipper's ratification of carrier's delivery at wrong destination. 15 ALR 2d 821.

Tort liability of carrier for theft by servant. 15 ALR 2d 842.

Railroad's carrier's liability for loss of baggage or effects accompanying passenger. 32 ALR 2d 630.

CHAPTER 5—BILLS OF LADING

8-501. (7828) Bill of lading defined.

Provision in bill of lading prohibiting or limiting consignee's right to inspect goods shipped. 25 ALR 2d 770.

CHAPTER 7—COMMON CARRIERS IN GENERAL

8-702. (7847) Obligation to accept freight.

References

Cited or applied in Great Northern Ry. Co. v. Melton, 193 F 2d 729, 732.

Carrier's liability for loss through weight deficiency of goods shipped. 39 ALR 2d 235.

8-707. (7852) Obligations of carrier altered only by agreement.

Consideration

There needn't be special consideration for the special contract. There is consideration where a company agrees for $600 to haul the freight on the terms stated which includes the special contract. Great Northern Ry. Co. v. Melton, 193 F 2d 729.

Operation and Effect

When a special contract limits the liability of the carrier by excluding acts of God, and it is found that damage to sheep shipped resulted from a concurrence of raining weather, and the negligent care or inspection of the carrier, there must be a finding as to what portion of the loss was attributable to the latter cause since liability cannot be predicated upon the rain. Great Northern Ry. Co. v. Melton, 193 F 2d 729, 730, 733.

Limitation of liability for personal injury by air carrier. 13 ALR 2d 337.

8-708. (7853) Certain agreements void.

Limitation of liability for personal injury by air carrier. 13 ALR 2d 337.

CHAPTER 8—COMMON CARRIERS OF PERSONS, PROPERTY AND MESSAGES, THEIR RIGHTS AND OBLIGATIONS

8-812. (7867) Liability of inland carriers for loss.

Operation and Effect

Where a carrier transported sheep, and during transportation the sheep were exposed to rain and became wet and dirty and were bruised and injured so as to become sick and some died, the damage was not caused by an "inherent defect, vice, weakness, or spontaneous action" of the sheep and hence the carrier is not excepted from liability by this section. Great Northern Ry. Co. v. Melton, 193 F 2d 729, 730.

Deviation by carrier in transportation of property. 33 ALR 2d 145.

8-815. (7870) Consignor of valuables to declare their nature.

Duty of consignee as to valuation of goods on reshipment to consignor. 16 ALR 2d 866.

TITLE 9—CEMETERIES

Chapter 2. Public Cemetery District Act, 9-209, 9-209.1 to 9-209.3, 9-216 to 9-232.
5. Mausoleums and columbariums—title of act—definitions, 9-501 to 9-519.
6. Authority over disposition of remains in mausoleums or columbariums—records, 9-601 to 9-612.
7. Corporations for operation of mausoleums or columbariums—powers, 9-701 to 9-716.
8. Dedication of mausoleum or columbarium property—plats—property rights in plots, 9-801 to 9-834.
9. Endowment care funds of mausoleums and columbariums, 9-901 to 9-927.
10. Mausoleums and columbariums—penalties and miscellaneous provisions, 9-1001 to 9-1014.

CHAPTER 1—CEMETERY ASSOCIATIONS—INCORPORATION OF

9-119. (6487) **Transfer of lots.**

Cemeteries⊂⊃15.
14 C.J.S. Cemeteries § 27.

Rights and remedies as between cotenants of cemetery lots respecting burials therein. 10 ALR 2d 219.

CHAPTER 2—PUBLIC CEMETERY DISTRICT ACT

Section 9-209. Budget and tax levy.
9-209.1. Disbursement of tax proceeds.
9-209.2. Validating act.
9-209.3. Payment of validated warrants.
9-216. Permanent care and improvement fund—public cemetery district to provide for.
9-217. Trustees of fund—appointment—qualifications—bank as trustee.
9-218. Tenure of office.
9-219. Bond of trustees—amount—conditions — new bonds — approval by court—filing—deposits with county treasurer—expenditures.
9-220. Vacancy—filling.
9-221. Vesting of powers and duties in new trustees.
9-222. Failure of district to make application for trustees or disability of all members of board of trustees—vesting of interest, powers and duties with district court—appointment of board upon application—accounting.
9-223. Recording of instruments of appointment of trustees.
9-224. Transfers of moneys to permanent care and improvement fund—resolution—maximum amount of fund.
9-225. Principal of fund to remain intact—income turned over to treasurer of district.
9-226. Income from portion of fund received from sale of lots—use—specific payments for upkeep of lots—specifying in conveyance of lots of amount to be transferred to fund.
9-227. Investment of principal.
9-228. Compensation of trustees—limitation—fees—payment.
9-229. Secretary.
9-230. Annual report—inspection.
9-231. Existing permanent improvement funds—effect on.
9-232. Short title.

9-209. Budget and tax levy. The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law. The board of county commissioners must annually, at the time of levying county taxes, fix and levy upon all property within said cemetery district, sufficient to raise the

amount certified by the board of cemetery trustees to be raised by a tax on the property of said district. The tax so levied shall not exceed two (2) mills on each dollar of taxable valuation on the property of said district. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided herein and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district. In so far as the same can be made applicable, the county budget system, sections 16-1901 to 16-1911 of the Revised Codes of Montana of 1947, shall govern the operation of cemetery districts created under this act.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955.

Amendments

The 1951 amendment raised the maximum levy from one mill to two mills.

The 1955 amendment inserted the word "budget" before the word "meetings" in the first sentence and added the last two sentences.

Effective Date

Section 2 of Ch. 93, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Repealing Clause

Section 3 of Ch. 93, L. 1951 repealed all acts and parts of acts in conflict therewith.

9-209.1. Disbursement of tax proceeds. The proceeds of taxes collected by the county treasurer for the public cemetery fund shall be disbursed to the various cemetery districts upon the submission of a claim by said cemetery districts to the board of county commissioners for their pro rata share of the proceeds of the taxes collected. Upon approval of said claim by the board of county commissioners the county clerk shall issue a trust fund warrant drawn upon the public cemetery fund and payable to each claimant.

History: En. Sec. 1, Ch. 94, L. 1951.

Title of Act

An act to provide the procedure to be followed in distributing the proceeds of taxes collected for public cemetery districts, and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 94, L. 1951 repealed all acts and parts of acts in conflict therewith.

9-209.2. Validating act. All warrants heretofore issued by any cemetery district for services actually rendered or goods, wares, merchandise or material actually furnished to said cemetery district are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power of such cemetery district to authorize or issue such warrants by reason of noncompliance with any budget act or their being in excess of any cemetery district budget or because of failure to include provision for the same in any cemetery district budget or otherwise and said warrants so issued for value received by said cemetery district shall be binding, legal, valid and enforceable obligations of such cemetery district.

History: En. Sec. 2, Ch. 4, L. 1955.

9-209.3. Payment of validated warrants. All cemetery district warrants validated, ratified, approved and confirmed by the provisions of this act shall be paid by the cemetery district which issued the same from any funds which the cemetery district may have on hand which are not appro-

priated for other purposes. Any such cemetery district is also authorized and directed to make provision for the payment of said warrants by including in its budget each year in which such warrants remain outstanding an item providing for the payment of such warrants as can be paid within the proceeds of the two (2) mill maximum levy on each dollar of taxable valuation of the property of said district specified in section 9-209 of the Revised Codes of Montana of 1947, as amended by chapter 93 of the Laws of 1951, taking into consideration other income of the cemetery district and after having provided for the other budget requirements submitted by the board of cemetery trustees to the board of county commissioners and such maximum two (2) mill levy shall be made annually until said warrants are paid, provided, that no interest or other charges for the use of the money represented by said warrants shall be paid by the cemetery district. All cemetery district warrants validated, ratified, approved and confirmed by the provisions of this act shall be listed by the cemetery district having issued the same in the order in which they were issued by said cemetery district and the warrants shall be paid in the order in which they were issued as funds become available for the payment thereof under the provisions of this act.

History: En. Sec. 3, Ch. 4, L. 1955.

Repealing Clause

Section 4 of Ch. 4, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 4, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 1, 1955.

9-216. Permanent care and improvement fund—public cemetery district to provide for. Any public cemetery district formed under the provisions of sections 9-201, Revised Codes of Montana, 1947, et seq., which shall have established and be maintaining a cemetery, shall provide, in the manner set forth in this chapter, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such public cemetery district.

History: En. Sec. 1, Ch. 165, L. 1955.

Title of Act

An act authorizing and creating a permanent care and improvement fund for public cemetery districts; relating to transfers of money by public cemetery district trustees to the fund; providing for the manner of appointment and qualifications of trustees, including corporate trustees; providing for the tenure of office of trustees; and manner of filling vacancies; providing for surety bonds for trustees; allowing trustees of the fund to deposit money, bonds and securities with the county treasurer; providing fund be inviolable and separate from other funds; providing that future conveyance of lots designate the percentage of the purchase price transferred to fund; providing for compensation, reports, records and a secretary of said trustees; validating existent funds if consistent with this act; containing a savings or separability clause and providing for a short title.

9-217. Trustees of fund—appointment—qualifications—bank as trustee. Whenever moneys to the amount of one hundred dollars ($100.00) shall have been received by such public cemetery district, heretofore or hereafter formed, such a fund, either from the sale of lots or from direct payments of such public cemetery district toward such a fund by lot owners, the trustees of such public cemetery district shall immediately make application to the judge of the district court for the judicial district in which the cemetery

for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund and the judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such public cemetery district. Such trustee or such board shall consist of not less than one (1) nor more than five (5) persons, the exact number to rest in the discretion of the said trustees of said public cemetery district. Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification, as hereinafter provided, of the said trustees of such fund, all of the title to the funds included in said trust, and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining, shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed, to qualify within thirty (30) days after their appointment, then the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, then a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such public cemetery district some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund, heretofore appointed by such public cemetery district, or district courts, shall continue to hold their office as such trustees until terminated in one of the manners in this act provided.

The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law, to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond, but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 2, Ch. 165, L. 1955.

9-218. Tenure of office. The tenure of office of the trustee or trustees of such fund shall be for the term of three (3) years, unless they permanently remove from the state of Montana, or are removed from office by the judge of said district court for good cause shown, or their tenure is otherwise terminated as in this act provided.

History: En. Sec. 3, Ch. 165, L. 1955.

9-219. Bond of trustees—amount—conditions—new bonds—approval by court—filing—deposits with county treasurer—expenditures. Before exercising, or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the public cemetery district for which the trust is maintained, a bond in a sum equalling at least one and one-third (1 1/3) times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust

until July first of the next even-numbered year after the year in which such bond shall be given, and until such trustee shall give a new bond as hereinafter provided. Upon the first day of July in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists, or some part thereof shall be situate, and shall be filed with the clerk of the district court of the county in which such cemetery is located. Any failure so to renew bonds within thirty (30) days after the time hereinbefore provided shall be a sufficient ground for the removal of any trustee within the discretion of the district court.

The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to, and do deposit with the county treasurer as hereinafter provided.

The trustee or trustees of such fund may deposit such money, bonds and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds and securities, and pay them out, or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district, and not otherwise, and to keep an account with such trustee or trustees of all such transactions; and for the safekeeping and payment and delivery of all such moneys, bonds and securities, as herein provided, the said treasurer and his sureties are liable upon his official bond.

History: En. Sec. 4, Ch. 165, L. 1955.

9-220. Vacancy—filling. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies, in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 5, Ch. 165, L. 1955.

9-221. Vesting of powers and duties in new trustees. In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever, existing in such trustee at the time of such death, resignation, disability or removal, shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 6, Ch. 165, L. 1955.

9-222. Failure of district to make application for trustees or disability of all members of board of trustees—vesting of interest, powers and duties with district court—appointment of board upon application—accounting. In the case of the failure of the trustees of such public cemetery district to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in section 2 [9-217], or in the case of the death, removal, resignation or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises and trusts, until the appointment and qualification of a new board of trustees of such fund shall vest in the district court of the county in which such cemetery or the greater part thereof, shall be situated. In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section, shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this act. Such trustee or such board of trustees must annually, or oftener if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated, a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time. Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the public cemetery district, and any trustee of the said trust fund, shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 7, Ch. 165, L. 1955.

9-223. Recording of instruments of appointment of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the public cemetery district establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such public cemetery district is located.

History: En. Sec. 8, Ch. 165, L. 1955.

9-224. Transfers of moneys to permanent care and improvement fund—resolution—maximum amount of fund. From and after the passage and approval of this act, the trustees of such cemetery district as are mentioned in section 1 [9-216] shall provide by resolution spread upon the minutes of such public cemetery district, for the transfer to the trustees of such "permanent care and improvement fund," of not less than fifteen (15) nor more than forty (40) per cent of the moneys received from the sale of cemetery lots designated as perpetual care lots by said public cemetery district, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July and October of each year, to the trustees of such fund. If at any time there shall remain

in the hands of such public cemetery district unexpended money, over and above the liabilities of the public cemetery district, the board of trustees of such public cemetery district may, by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such "permanent care and improvement fund"; provided, that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots) shall never in any case be allowed to exceed the sum of five thousand dollars ($5,000.00) per acre of the cemetery to be cared for therewith; and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

History: En. Sec. 9, Ch. 165, L. 1955.

9-225. Principal of fund to remain intact—income turned over to treasurer of district. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall, on the first of January and first of July in each year, turn over to the treasurer of such public cemetery district all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: En. Sec. 10, Ch. 165, L. 1955.

9-226. Income from portion of fund received from sale of lots—use—specific payments for upkeep of lots—specifying in conveyance of lots of amount to be transferred to fund. The income of that portion of such fund, received from the sales of lots designated as perpetual care lots shall be used, in the discretion of the trustees of such public cemetery district, solely for the care, maintenance, and improvement of such cemetery lots, its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes, for one (1) year after its being so paid over to the treasurer of such public cemetery district, it shall be returned to the trustees of such fund by said treasurer, and become a part of the principal. Hereafter all public cemetery districts shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor, to be transferred under the provisions of this chapter to the "permanent care and improvement fund" of such public cemetery district, and also such further sum, if any there be, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed, so to be transferred as hereinbefore provided.

History: En. Sec. 11, Ch. 165, L. 1955.

9-227. Investment of principal. The principal of such fund may be invested in the way in which trust funds are permitted to be invested in the state of Montana and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district and also by the district judge of the county in which the cemetery is situated.

History: En. Sec. 12, Ch. 165, L. 1955.

9-228. Compensation of trustees — limitation — fees — payment. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the public cemetery district on the other, provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of one hundred dollars ($100.00) per annum. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the public cemetery district until such trust fund shall reach ten thousand dollars ($10,000.00) and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 13, Ch. 165, L. 1955.

9-229. Secretary. The secretary of the public cemetery district shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 14, Ch. 165, L. 1955.

9-230. Annual report—inspection. The trustee or the board of trustees of such fund shall annually, on the first day of January, make their report of the condition of such trust fund to the trustees of the public cemetery district as hereinbefore provided. Such reports shall always be kept by the secretary of such public cemetery district, and by the clerk of the district court, and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 15, Ch. 165, L. 1955.

9-231. Existing permanent improvement funds—effect on. Any "permanent improvement fund" established prior to the taking effect of this act by any public cemetery district, as far as consistent with the provisions of this act, shall remain in existence and be subject to the provisions hereof.

History: En. Sec. 16, Ch. 165, L. 1955.

9-232. Short title. This act may be cited as "The Public Cemetery District Permanent Care and Improvement Fund Act."

History: En. Sec. 19, Ch. 165, L. 1955.

Repealing Clause

Section 17 of Ch. 165, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 18 of Ch. 165, Laws 1955 read "If any section, clause, paragraph or provision of this act shall be found invalid by court of competent jurisdiction, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, paragraph or clause and the act as a whole shall not be declared invalid by reason of the fact that one or more sections, clauses, sentences, paragraphs or parts may have been found invalid by any court."

CHAPTER 5—MAUSOLEUMS AND COLUMBARIUMS—TITLE OF ACT—DEFINITIONS

Section 9-501. Title of act—definitions.
9-502. "Human remains" or "remains" defined.
9-503. "Cremated remains" defined.
9-504. "Mausoleum" defined.
9-505. "Columbarium" and "urn garden" defined.
9-506. "Mausoleum-columbarium" defined.

9-507. "Crematory" defined.
9-508. "Interment" and "interment space" defined.
9-509. "Cremation" defined.
9-510. "Inurnment" defined.
9-511. "Entombment" defined.
9-512. "Crypt" or "vault" defined.
9-513. "Niche" defined.
9-514. "Temporary receiving vault" defined.
9-515. "Mausoleum-columbarium authority" defined.
9-516. "Mausoleum business," "columbarium business" and "mausoleum-columbarium business or purposes" defined.
9-517. "Directors" or "governing body" defined.
9-518. "Plot" or "interment plot" defined.
9-519. "Plot owner," "owner" or "proprietor" defined.

9-501. Title of act—definitions. This act [9-501 to 9-1014] shall be known as the "mausoleum-columbarium act", and, for the purposes of this act, certain words used herein shall have the meanings as defined in sections 2 to 19 [9-502 to 9-519] hereof, inclusive.

History: En. Sec. 1, Ch. 35, L. 1949.

Title of Act

An act relating to and regulating mausoleums and columbariums and the interment of dead human remains therein, regulating crematories in connection with mausoleums and columbariums, providing for and regulating endowment care funds for mausoleums and columbariums, and providing penalties for violation thereof.

Cemeteries⇨3.
14 C.J.S. Cemeteries § 3.

9-502. "Human remains" or "remains" defined. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

History: En. Sec. 2, Ch. 35, L. 1949.

9-503. "Cremated remains" defined. "Cremated remains" means human remains after cremation in a crematory.

History: En. Sec. 3, Ch. 35, L. 1949.

9-504. "Mausoleum" defined. "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for interment purposes.

History: En. Sec. 4, Ch. 35, L. 1949.

9-505. "Columbarium" and "urn garden" defined. "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for interment purposes. "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used, or intended to be used, for inurnment of cremated remains, in a place used, or intended to be used, and dedicated for internment [interment] purposes. Wherever the context shall permit "urn garden" shall be deemed to be included in "columbarium."

History: En. Sec. 5, Ch. 35, L. 1949.

Compiler's Note

The bracketed word "interment" was inserted by the compiler.

9-506. "Mausoleum-columbarium" defined. "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

History: En. Sec. 6, Ch. 35, L. 1949.

10 Am. Jur. 508, Cemeteries, §§ 31 et seq.

9-507. "Crematory" defined. "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.

History: En. Sec. 7, Ch. 35, L. 1949.

9-508. "Interment" and "interment space" defined. "Interment" means the disposition of human remains by cremation and inurnment, or entombment in a place used, or intended to be used, and dedicated for interment purposes. "Interment space" means any space in a crypt, vault or niche of sufficient size for the entombment or inurnment of the remains of one human being.

History: En. Sec. 8, Ch. 35, L. 1949.

9-509. "Cremation" defined. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

History: En. Sec. 9, Ch. 35, L. 1949.

9-510. "Inurnment" defined. "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

History: En. Sec. 10, Ch. 35, L. 1949.

9-511. "Entombment" defined. "Entombment" means the placement of human remains in a crypt or vault.

History: En. Sec. 11, Ch. 35, L. 1949.

9-512. "Crypt" or "vault" defined. "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb the uncremated human remains.

History: En. Sec. 12, Ch. 35, L. 1949.

9-513. "Niche" defined. "Niche" means a space in a columbarium or urn garden used, or intended to be used, for inurnment of cremated human remains.

History: En. Sec. 13, Ch. 35, L. 1949.

9-514. "Temporary receiving vault" defined. "Temporary receiving vault" means a vault used, or intended to be used, for the temporary placement of human remains.

History: En. Sec. 14, Ch. 35, L. 1949.

9-515. "Mausoleum-columbarium authority" defined. "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling or operating lands, buildings or structures used, or intended to be used, and dedicated for interment purposes by entombment or inurnment, but shall not refer to any corporation for profit or not for profit, or any association, corporation sole, or other person owning or controlling cemetery lands or property including mausoleums and/or columbariums where interment is also made by ground burial.

History: En. Sec. 15, Ch. 35, L. 1949.

9-516. "Mausoleum business," "columbarium business" and "mausoleum-columbarium business or purposes" defined. "Mausoleum business", "columbarium business", and "mausoleum-columbarium business or purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium, interring human remains therein, and the care, preservation and embellishment of such property.

History: En. Sec. 16, Ch. 35, L. 1949.

9-517. "Directors" or "governing body" defined. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

History: En. Sec. 17, Ch. 35, L. 1949.

9-518. "Plot" or "interment plot" defined. "Plot", or "interment plot" means space in a mausoleum or columbarium used, or intended to be used, for the interment of human remains. Such terms include and apply to one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

History: En. Sec. 18, Ch. 35, L. 1949.

9-519. "Plot owner," "owner" or "proprietor" defined. "Plot owner", or "owner", or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

History: En. Sec. 19, Ch. 35, L. 1949.

Compiler's Note

Sections 20 to 22 of this act are compiled as secs. 9-1001 to 9-1003.

CHAPTER 6—AUTHORITY OVER DISPOSITION OF REMAINS IN MAUSOLEUMS OR COLUMBARIUMS—RECORDS

Section 9-601. Persons authorized to control disposition—liability for cost.
9-602. Liability of person signing authorization.
9-603. Authorization exempts mausoleum-columbarium from liability.
9-604. Limitation of actions against mausoleum-columbarium—funeral directors exempt from liability.
9-605. Removal of remains.
9-606. Application to court for removal—notice.
9-607. When removals excepted from sections 9-605, 9-606.
9-608. Records of interments and cremations required.
9-609. Records of plots and transfers.
9-610. Records open to inspection.
9-611. Record of casket before cremation.
9-612. Violation of section 9-611 a misdemeanor.

9-601. Persons authorized to control disposition—liability for cost. The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

(a) The surviving spouse.
(b) The surviving children of the decedent.
(c) The surviving parents of the decedent.

The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

History: En. Sec. 23, Ch. 35, L. 1949.

Dead Bodies⇨1.
25 C.J.S. Dead Bodies § 2.

15 Am. Jur. 831, Dead Bodies, § 6 et seq.
Civil liability of undertaker for acts or omissions relating to corpse. 17 ALR 2d 770.

9-602. Liability of person signing authorization. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty.

History: En. Sec. 24, Ch. 35, L. 1949.

9-603. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

History: En. Sec. 25, Ch. 35, L. 1949.

Cemeteries⇨5.
14 C.J.S. Cemeteries § 11.

9-604. Limitation of actions against mausoleum-columbarium—funeral directors exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of two (2) years, unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949.

Cemeteries⇨5.
14 C.J.S. Cemeteries § 11.

9-605. Removal of remains. The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one (1) of the following in the order named:

(a) The surviving spouse.
(b) The surviving children of the decedent.
(c) The surviving parents of the decedent.
(d) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient, provided that the permission shall not violate the terms of a written contract or the rules and regulations of the mausoleum-columbarium authority.

History: En. Sec. 27, Ch. 35, L. 1949.

Dead Bodies⇐5.
25 C.J.S. Dead Bodies § 4.
15 Am. Jur. 41, Dead Bodies, §§ 18 et seq.

9-606. Application to court for removal—notice. Notice of application to the court for such permission shall be given, at least ten (10) days prior thereto, personally, or at least fifteen (15) days prior thereto if by mail, to the mausoleum-columbarium authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court.

History: En. Sec. 28, Ch. 35, L. 1949.

9-607. When removals excepted from sections 9-605, 9-606. Sections 27 and 28 [9-605, 9-606] of this act do not apply to or prohibit the removal of any remains from one plot to another in the same dedicated area, owned or operated by the same mausoleum-columbarium authority, from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor does it apply to the disinterment of remains upon order of court or coroner.

History: En. Sec. 29, Ch. 35, L. 1949.

Compiler's Note

Sections 30 to 32 of this act are compiled as secs. 9-1004 to 9-1006.

9-608. Records of interments and cremations required. The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments or cremations are made, shall keep a record of all remains interred or cremated on the premises under its charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director.

History: En. Sec. 33, Ch. 35, L. 1949.

Cemeteries⇐5.
14 C.J.S. Cemeteries § 11.

9-609. Records of plots and transfers. A record shall be kept of the ownership of all plots in the mausoleum and columbarium which have been conveyed by the mausoleum-columbarium authority, and of all transfers of plots therein. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until recorded on the books of the mausoleum-columbarium authority.

History: En. Sec. 34, Ch. 35, L. 1949.

Cemeteries⇐5.
14 C.J.S. Cemeteries § 11.

9-610. Records open to inspection. The records shall be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: En. Sec. 35, Ch. 35, L. 1949.

Compiler's Note

Section 36 of this act is compiled as sec. 9-701.

9-611. Record of casket before cremation. No crematory operated by a mausoleum-columbarium authority shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto.

History: En. Sec. 51, Ch. 35, L. 1949.

Compiler's Note

Section 50 of this act is compiled as sec. 9-715.

9-612. Violation of section 9-611 a misdemeanor. Each person violating any provision of section 51 [9-611] of this act shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 52, Ch. 35, L. 1949.

Compiler's Note

Section 53 of this act is compiled as sec. 9-715.

CHAPTER 7—CORPORATIONS FOR OPERATION OF MAUSOLEUMS OR COLUMBARIUMS—POWERS

Section 9-701. Limitation on authority to engage in business.
9-702. Authority of corporations—number of members on governing board.
9-703. Cemetery corporations unaffected—application of act.
9-704. Corporate powers enlarged.
9-705. Powers to make rules and regulations.
9-706. Limitations on use of property.
9-707. Regulation of markers, monuments and structures.
9-708. Regulation or prohibition of erection of monuments, markers or structures.
9-709. Regulation of plants or shrubs.
9-710. Regulation of interments.
9-711. Regulation of personal conduct.
9-712. Other rules and regulations.
9-713. Rules and regulations to be printed or typed—inspection.
9-714. Police powers of person in charge.
9-715. General powers.
9-716. Acquisition of property.

9-701. Limitation on authority to engage in business. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a mausoleum-columbarium within this state except by means of a corporation duly organized for that purpose.

History: En. Sec. 36, Ch. 35, L. 1949.

Cemeteries⇨1.
14 C.J.S. Cemeteries § 2.

9-702. Authority of corporations—number of members on governing board. Any private corporation organized under the laws of the state of Montana and authorized by its articles so to do, may establish, maintain, manage, improve or operate a mausoleum, columbarium or crematory, or any combination thereof, and conduct any or all of the businesses of a mausoleum-columbarium and crematory either for or without profit to its members or stockholders. The governing board of any mausoleum-columbarium authority shall have not less than seven members.

History: En. Sec. 37, Ch. 35, L. 1949.

Cemeteries⇨1.
14 C.J.S. Cemeteries § 2.

9-703. Cemetery corporations unaffected—application of act. The provisions of this act do not affect the corporate existence, or rights or powers of any cemetery corporation organized under any law of the state of Montana in which a mausoleum, columbarium, or crematory, or combination thereof, shall be situated, maintained or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This act and all its provisions shall be applicable to and only to mausoleums and/or columbariums owned, operated or controlled by a mausoleum-columbarium authority organized and governed as herein provided, and

owning, controlling or operating lands, buildings, structures, etc., solely for the entombment and inurnment of human remains.

History: En. Sec. 38, Ch. 35, L. 1949. Cemeteries⚖5.
14 C.J.S. Cemeteries § 11.

9-704. Corporate powers enlarged. The powers, privileges and duties conferred and imposed upon any corporation existing and doing business under the laws of the state are hereby enlarged as each particular case may require to conform to the provisions of this act.

History: En. Sec. 39, Ch. 35, L. 1949. Cemeteries⚖5.
14 C.J.S. Cemeteries § 11.

9-705. Powers to make rules and regulations. A mausoleum-columbarium authority may make, adopt, amend, add to, revise or modify, and enforce rules and regulations, for the use, care, control, management, restriction and protection of all or any part of its mausoleum, columbarium or crematory, and for the other purposes specified in sections 41 to 49 [9-606 to 9-614], inclusive, of this act.

History: En. Sec. 40, Ch. 35, L. 1949.

9-706. Limitations on use of property. It may restrict and limit the use of all property within its mausoleum, columbarium or crematory.

History: En. Sec. 41, Ch. 35, L. 1949.

9-707. Regulation of markers, monuments and structures. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium.

History: En. Sec. 42, Ch. 35, L. 1949. Cemeteries⚖18.
14 C.J.S. Cemeteries § 33.

9-708. Regulation or prohibition of erection of monuments, markers or structures. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 43, Ch. 35, L. 1949. Cemeteries⚖18.
14 C.J.S. Cemeteries § 33.

9-709. Regulation of plants or shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 44, Ch. 35, L. 1949.

9-710. Regulation of interments. It may prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment, and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations.

History: En. Sec. 45, Ch. 35, L. 1949. Dead Bodies⚖3.
25 C.J.S. Dead Bodies § 5.

9-711. Regulation of personal conduct. It may regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds within which the same are situated.

History: En. Sec. 46, Ch. 35, L. 1949.

9-712. Other rules and regulations. It may make and enforce rules and regulations for all other purposes deemed necessary by the mausoleum-

columbarium authority for the proper conduct of the business of the mausoleum, columbarium or crematory, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans and ideals on which the mausoleum, columbarium or crematory is conducted.

History: En. Sec. 47, Ch. 35, L. 1949.

9-713. Rules and regulations to be printed or typed—inspection. The rules and regulations made pursuant to section 47 [9-712] of this act, shall be plainly printed or typwritten and maintained subject to inspection in the office of the mausoleum-columbarium authority or in such place or places within the mausoleum or columbarium as the mausoleum-columbarium authority may prescribe.

History: En. Sec. 48, Ch. 35, L. 1949.

9-714. Police powers of person in charge. The sexton, superintendent or other person in charge of a mausoleum-columbarium, and such other person as the mausoleum-columbarium authority designates has the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county, within the mausoleum-columbarium over which he has charge, and within such radius as may be necessary to protect the mausoleum-columbarium or crematory property.

History: En. Sec. 49, Ch. 35, L. 1949.

Compiler's Note

Sections 50 to 52 of this act are compiled as secs. 9-1009, 9-611, 9-612 respectively.

9-715. General powers. Unless otherwise limited by the law under which created, mausoleum-columbarium authorities, whether for profit or not for profit, shall in the conduct of their business, have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitations of general laws as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. A mausoleum-columbarium authority shall have power to carry on, in connection with its mausoleum-columbarium business, and either on the dedicated premises or separately, any business incidental to the burial, or preparation for burial, of dead human bodies.

History: En. Sec. 53, Ch. 35, L. 1949.

Cemeteries⇦5.
14 C.J.S. Cemeteries § 11.

Compiler's Note

Section 54 of this act is compiled as sec. 9-807.

9-716. Acquisition of property. Mausoleum-columbarium authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories and columbariums within which the interment of the dead may be authorized by law.

History: En. Sec. 55, Ch. 35, L. 1949.

Cemeteries⇦11.
14 C.J.S. Cemeteries § 19.

CHAPTER 8—DEDICATION OF MAUSOLEUM OR COLUMBARIUM PROPERTY —PLATS—PROPERTY RIGHTS IN PLOTS

Section 9-801. Map or plat to be made.
9-802. Filing map or plat—declaration of dedication.
9-803. Dedication complete on filing—tax exemption.
9-804. Amended map or plat.
9-805. Filed map and recorded declaration as constructive notice.
9-806. Effect of dedication.
9-807. Encumbrances or liens—effect.
9-808. Dedication not violative of law against perpetuities.
9-809. Rights of way for utilities prohibited—consent.
9-810. Sale of interment plots.
9-811. Separate plots indivisible.
9-812. Signature on conveyance.
9-813. Selling for resale at profit—misdemeanor.
9-814. Commission or rebate for sale—misdemeanor—exception.
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9-801. Map or plat to be made. Every mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens and other divisions with descriptive names or numbers.

History: En. Sec. 56, Ch. 35, L. 1949.

Cemeteries⇐1.
14 C.J.S. Cemeteries § 2.
10 Am. Jur. 503, Cemeteries, § 22.

9-802. Filing map or plat—declaration of dedication. The mausoleum-columbarium authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to interment purposes.

History: En. Sec. 57, Ch. 35, L. 1949.

Dedication⇐10.
26 C.J.S. Dedication § 8.
10 Am. Jur. 489, Cemeteries, § 6 et seq.

9-803. Dedication complete on filing—tax exemption. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property and all mausoleums

and columbariums constructed thereon and burial plots located therein, shall be held, occupied, and used exclusively for interment purposes, and shall be exempt from all state, county and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

History: En. Sec. 58, Ch. 35, L. 1949.

Dedication⇐10.
26 C.J.S. Dedication § 8.

9-804. Amended map or plat. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person.

History: En. Sec. 59, Ch. 35, L. 1949.

9-805. Filed map and recorded declaration as constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the property to interment purposes.

History: En. Sec. 60, Ch. 35, L. 1949.

9-806. Effect of dedication. After property is dedicated to interment purposes pursuant to sections 56 to 60 [9-801 to 9-805], inclusive, of this act, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the mausoleum-columbarium authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in this act.

History: En. Sec. 61, Ch. 35, L. 1949.

Dedication⇐46.
26 C.J.S. Dedication § 49.

9-807. Encumbrances or liens—effect. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a mausoleum-columbarium pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to the mausoleum-columbarium purposes pursuant to this part, shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosures are subject and subordinate to the dedication for mausoleum-columbarium purposes.

History: En. Sec. 54, Ch. 35, L. 1949.

Although there are references in this section to "this part" the act was not divided into parts.

Compiler's Notes

Sections 53 and 55 of this act are compiled as secs. 9-715, 9-716 respectively.

Dedication⇐53.
26 C.J.S. Dedication § 50.

9-808. Dedication not violative of law against perpetuities. Dedication to interment purposes pursuant to this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public.

History: En. Sec. 62, Ch. 35, L. 1949.

Perpetuities⇐4(1), 6(1).
48 C.J. Perpetuities §§ 21, 144.

9-809. Rights of way for utilities prohibited—consent. After dedication pursuant to this act, and as long as the property remains dedicated to interment purposes, no railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the mausoleum-columbarium authority owning and operating it, or of not less than two-thirds of the owners of interment plots therein.

History: En. Sec. 63, Ch. 35, L. 1949.

Dedication⇐57.
26 C.J.S. Dedication § 54.

9-810. Sale of interment plots. After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots subject to such rules and regulations as may be then in effect or thereafter adopted by the mausoleum-columbarium authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot.

History: En. Sec. 64, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

Cross-Reference

Records of plots and transfers required, sec. 9-609.

9-811. Separate plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority, or as provided by law.

History: En. Sec. 65, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-812. Signature on conveyance. All conveyances made by a mausoleum-columbarium authority shall be signed by such officer or officers as are authorized by the mausoleum-columbarium authority.

History: En. Sec. 66, Ch. 35, L. 1949.

Cemeteries⇐13.
14 C.J.S. Cemeteries § 21.

9-813. Selling for resale at profit—misdemeanor. It shall be unlawful for any person, firm or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 67, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-814. Commission or rebate for sale—misdemeanor—exception. It shall be unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the authority previously appointed for such purpose. Each person violating this section shall be

guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 68, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-815. Commission or bonus for causing disposition of body in mausoleum or columbarium—misdemeanor. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in section 68 [9-814], any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or columbarium, is guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 69, Ch. 35, L. 1949.

9-816. Removal of dedication by order of court. Property dedicated to interment purposes shall be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the district court in the county in which the property is situated, in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(a) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(b) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

History: En. Sec. 70, Ch. 35, L. 1949.

Dedication⇐38.
26 C.J.S. Dedication § 60.

9-817. Notice of hearing on removal of dedication. The notice of hearing provided in section 70 [9-816] shall be given by publication once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the county where said mausoleum or columbarium is located, and the posting of copies of the notice in three (3) conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall:

(a) Describe the portion of the mausoleum or columbarium property sought to be removed from dedication.

(b) State that all remains have been removed or that no interments have been made in the portion of the mausoleum or columbarium property sought to be removed from dedication.

(c) Specify the time and place of the hearing.

History: En. Sec. 71, Ch. 35, L. 1949.

9-818. Property interest in plot. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

History: En. Sec. 72, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.
10 Am. Jur. 503, Cemeteries, § 42.

9-819. Spouse—vested right of interment. The spouse of an owner of any plot containing more than one (1) interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if an interment space therein not subject to the vested right of interment for previous spouses is unoccupied at the time such person becomes the spouse of the owner.

History: En. Sec. 73, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-820. Right of spouse not divested by conveyance—effect of divorce. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

History: En. Sec. 74, Ch. 35, L. 1949.

9-821. Descent of plot on death of owner. If no interment is made in a plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred therein are lawfully removed, the plot descends, upon the death of the owner, to his heirs-at-law subject to the rights of interment of the decedent and his surviving spouse, unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

History: En. Sec. 75, Ch. 35, L. 1949.

Descent and Distribution⇐8.
26 C.J.S. Descent and Distribution § 8.

Cross-Reference

Effect of interment having been made at time of death, sec. 9-828.

9-822. Exemption from inheritance tax. Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

History: En. Sec. 76, Ch. 35, L. 1949.

Taxation⇐872.
61 C.J. Taxation § 2526.

9-823. Affidavit showing death of owner and name of person entitled to plot. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to sections 72 to 75 [9-818 to 9-821], inclusive, of this act, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it.

History: En. Sec. 77, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-824. Conveyance to joint tenants. In a conveyance to two (2) or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed.

History: En. Sec. 78, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-825. Death of joint tenant—effect. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors,

subject to the vested right of interment of the remains of the deceased joint tenant.

History: En. Sec. 79, Ch. 35, L. 1949.

Joint Tenancy⇐6.
48 C.J.S. Joint Tenancy § 1.

9-826. Affidavit showing death of joint tenant and identity of survivors. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one (1) joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

History: En. Sec. 80, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-827. Co-owners of plot—designation of representative. When there are several owners of a plot, or of rights of interment in it, they may designate one (1) or more persons to represent the plot and file written notice of such designation with the mausoleum-columbarium authority. In the absence of such notice or of written objection to its so doing, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

History: En. Sec. 81, Ch. 35, L. 1949.

Cemeteries⇐16.
14 C.J.S. Cemeteries § 31.

9-828. Death of owner after interment of member of family—family plot. Whenever the remains of the record owner or of a member of his family or of a relative of a member of his family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner shall have died without making disposition of the plot either in his will by a specific devise, or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

History: En. Sec. 82, Ch. 35, L. 1949.

Cemeteries⇐15.
14 C.J.S. Cemeteries § 32.

9-829. Family plot—persons who may be interred. In a family plot one (1) crypt or one (1) niche or interment space therein may be used for the owner's interment; one (1) for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

History: En. Sec. 83, Ch. 35, L. 1949.

Cemeteries⇐16.
14 C.J.S. Cemeteries § 31.

9-830. Right of interment when no parent or child survives. If no parent or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner and second, in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

History: En. Sec. 84, Ch. 35, L. 1949.

9-831. Waiver of right of interment in family plot. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

History: En. Sec. 85, Ch. 35, L. 1949.

9-832. Waiver of vested right—termination of right upon interment elsewhere. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

History: En. Sec. 86, Ch. 35, L. 1949.

9-833. Limitations on vested right of interment. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

History: En. Sec. 87, Ch. 35, L. 1949.

9-834. Devise to mausoleum-columbarium authority by lot owner—effect. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

History: En. Sec. 88, Ch. 35, L. 1949.

CHAPTER 9—ENDOWMENT CARE FUNDS OF MAUSOLEUMS AND COLUMBARIUMS

Section
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9-923. Contributions are for charitable and eleemosynary purposes—validity of contributions.
9-924. Director or officer not to borrow funds.
9-925. Existing operators becoming subject to act—delivery of funds.
9-926. Officer or director violating act—vacancy.
9-927. Officer or director authorizing or consenting to loan—misdemeanor.

9-901. Authority to establish endowment care fund—investment. Every mausoleum-columbarium authority which now or hereafter maintains a mausoleum or columbarium may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund. Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

History: En. Sec. 89, Ch. 35, L. 1949.

Cemeteries⇐17.
14 C.J.S. Cemeteries § 29.

9-902. Principal of funds irreducible. The principal of all funds for endowment care shall forever remain irreducible and inviolable and shall be maintained separate and distinct from all other funds.

History: En. Sec. 90, Ch. 35, L. 1949.

9-903. Investment of funds—use of income. The principal of all funds for endowment care shall be invested, from time to time reinvested, and kept invested and the income earned shall be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium or both, and the grounds in which they are situated, and shall be applied in such manner as the mausoleum-columbarium authority may from time to time determine to be for the best interest of the mausoleum-columbarium.

History: En. Sec. 91, Ch. 35, L. 1949.

9-904. Plans for general care—collections from purchasers of plots for fund. The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium, and charge and collect from all subsequent purchasers of plots such reasonable sums as, in the judgment of the mausoleum-columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance and embellishment.

History: En. Sec. 92, Ch. 35, L. 1949.

9-905. Agreement for care in accordance with plan. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance, or in a separate instrument, an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

History: En. Sec. 93, Ch. 35, L. 1949.

9-906. Agreement for endowment care of plot. Upon the application of the owner of any plot, and upon the payment by him of the amount fixed

as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with him for the care of his plot and its appurtenances.

History: En. Sec. 94, Ch. 35, L. 1949.

9-907. Board of trustees for fund. The mausoleum-columbarium authority may appoint a board of trustees of not less than five (5) in number for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

History: En. Sec. 95, Ch. 35, L. 1949.

9-908. Directors of mausoleum-columbarium authority may act as trustees—investments. The directors of a mausoleum-columbarium authority, if any, may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

History: En. Sec. 96, Ch. 35, L. 1949.

9-909. Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and such bank or trust company shall be authorized to receive and accept said fund, and all accretions thereto, including any accumulated endowment care fund in existence at the time of its appointment.

History: En. Sec. 97, Ch. 35, L. 1949.

9-910. Compensation of trustees. No sum in excess of five per cent (5%) of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee, provided that if five per cent (5%) of such income divided by the number of trustees shall be less than one hundred dollars ($100.00) each trustee shall, nevertheless be entitled to receive a minimum of one hundred dollars ($100.00) per year for his services as such trustee.

History: En. Sec. 98, Ch. 35, L. 1949.

9-911. Annual report of financial condition. The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually, and within ninety (90) days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located, a true and correct written report, verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care funds.

History: En. Sec. 99, Ch. 35, L. 1949.

9-912. Property contributed to fund. A mausoleum-columbarium authority which has established an endowment care fund may take, receive,

and hold as a part of or incident to the fund any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund.

History: En. Sec. 100, Ch. 35, L. 1949.

9-913. Contributions are for charitable and eleemosynary purposes—validity of contributions. The endowment care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for general endowment care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property.

History: En. Sec. 101, Ch. 35, L. 1949.

9-914. Endowment care mausoleum-columbarium — amount of deposit required. An endowment care mausoleum-columbarium is one which shall hereafter deposit in its endowment care fund not less than the following amounts for plots sold or disposed of:

(a) Five dollars ($5.00) for each niche.

(b) Fifteen dollars ($15.00) for each crypt.

The deposit shall be made not later than the twentieth (20th) day of the month following the final payment on the purchase price of the plot.

History: En. Sec. 102, Ch. 35, L. 1949.

9-915. Nonendowment care mausoleum-columbarium. A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund the minimum specified in section 102 [9-914].

History: En. Sec. 103, Ch. 35, L. 1949.

9-916. Endowment care mausoleum or columbarium—sign required. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is an endowment care property."

History: En. Sec. 104, Ch. 35, L. 1949.

9-917. Annual report filed in principal office. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report which shall be available to any plot owner and which shall contain as of the close of its last fiscal year:

(a) Amount of principal of the endowment care fund.

(b) Total amount invested in bonds, securities or other investments authorized by law and the total amount of cash on hand not invested which shall actually show the financial condition of the trust.

History: En. Sec. 105, Ch. 35, L. 1949.

9-918. Annual revision of report—verification. All the information appearing on the report filed in the mausoleum-columbarium authority office shall be revised annually and verified by the president and secretary, or two (2) officers authorized by the mausoleum-columbarium authority.

History: En. Sec. 106, Ch. 35, L. 1949.

9-919. Nonendowment care mausoleum or columbarium—sign required. Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property." This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership or deeds.

History: En. Sec. 107, Ch. 35, L. 1949.

9-920. Violation of preceding sections a misdemeanor. Any corporation or its agents or representatives who shall violate any of the provisions of sections 102 to 107 [9-914 to 9-919], inclusive, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor.

History: En. Sec. 108, Ch. 35, L. 1949.

9-921. Investment of fund. The endowment care funds shall be invested, reinvested and kept invested in securities which are legal investments for trust funds under the laws of the state of Montana, in improved income-producing real estate in the state of Montana, or in first mortgages or deeds of trust on improved income-producing real estate in the state of Montana not exceeding in amount sixty per cent (60%) of the appraised value of such real estate at the time such mortgage or deed of trust is created or at the time such mortgage or deed of trust is purchased by the trustees.

History: En. Sec. 109, Ch. 35, L. 1949.

9-922. Acceptance of bequests. A mausoleum-columbarium authority which has established endowment care may also take and hold any property bequeathed, granted or given to it in trust to apply the principal, or proceeds, or income to either or all of the following purposes:

(a) Improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it.

(b) Planting or cultivation of trees, shrubs, or plants in or around any part of the grounds in which the mausoleum-columbarium is situated.

(c) Special care or ornamenting of any part of any plot, section, corridor or other portion of the mausoleum-columbarium.

(d) Any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

History: En. Sec. 110, Ch. 35, L. 1949.

9-923. Contributions are for charitable and eleemosynary purposes—validity of contributions. The sums paid in or contributed to the fund authorized by this act are hereby expressly permitted as and for a charitable and eleemosynary purpose. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred or to be interred in the mausoleum-columbarium and likewise a provision for the benefit and protection of the public by preserving, beautifying, and keeping mausoleums and columbariums from becoming unkept and place of reproach and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for such purpose is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: En. Sec. 111, Ch. 35, L. 1949. Perpetuities⇐4(1), 6(1).
48 C.J. Perpetuities §§ 21, 44.

9-924. Director or officer not to borrow funds. No director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care funds shall borrow any endowment care or special care funds of the corporation for himself, directly or indirectly.

History: En. Sec. 112, Ch. 35, L. 1949.

9-925. Existing operators becoming subject to act—delivery of funds. Any person, firm or corporation heretofore operating a mausoleum or columbarium which shall become subject to this act and who shall have collected endowment care funds to be used in connection therewith shall, within ninety (90) days after such mausoleum or columbarium becomes subject to this act, deliver to the trustees of the endowment care fund of the mausoleum-columbarium authority in control of such mausoleum or columbarium, all such endowment care funds theretofore collected or received by it and upon such delivery such person, firm or corporation shall be relieved of all further responsibility in connection therewith.

History: En. Sec. 113, Ch. 35, L. 1949.

9-926. Officer or director violating act—vacancy. The office of any director or officer who acts or permits action contrary to this act immediately thereupon becomes vacant.

History: En. Sec. 114, Ch. 35, L. 1949.

9-927. Officer or director authorizing or consenting to loan—misdemeanor. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of this article are severally guilty of a misdemeanor.

History: En. Sec. 115, Ch. 35, L. 1949.

Compiler's Note

Section 116 of this act is compiled as sec. 9-1007.

CHAPTER 10—MAUSOLEUMS AND COLUMBARIUMS—PENALTIES AND MISCELLANEOUS PROVISIONS

Section 9-1001. Removal of remains with intent to sell or dissect—penalty.
9-1002. Removal of remains without authority—penalty.
9-1003. Attachment of remains—misdemeanor.
9-1004. Destruction or mutilation of mausoleum or columbarium—interference with interment—misdemeanor.
9-1005. Civil liability.
9-1006. Exceptions from violation of preceding sections.
9-1007. Converted or altered building subject to act.
9-1008. Requirements as to construction or alteration of buildings.
9-1009. Fireproof construction of crematories—exceptions.
9-1010. Fireproof construction of mausoleums and columbariums.
9-1011. Construction to comply with city ordinances.
9-1012. Violations of act a misdemeanor.
9-1013. Construction in violation of act a public nuisance—penalty.
9-1014. Exceptions from act.

9-1001. Removal of remains with intent to sell or dissect—penalty. Every person who removes any part of any human remains from any place where it has been interred in a mausoleum or columbarium, or from any place where it is deposited while awaiting interment in a mausoleum or columbarium, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than one thousand dollars ($1,000.00), or by both.

History: En. Sec. 20, Ch. 35, L. 1949.

Cemeteries⇐22.
14 C.J.S. Cemeteries § 37.

Compiler's Note

Section 19 of this act is compiled as sec. 9-519.

9-1002. Removal of remains without authority—penalty. Every person who mutilates, disinters, or removes from the place of interment in a mausoleum or columbarium any human remains without authority of law, shall be punished by imprisonment in the state penitentiary for not more than three (3) years, or by a fine of not more than one thousand dollars ($1,000.00), or by both.

History: En. Sec. 21, Ch. 35, L. 1949.

Cemeteries⇐22.
14 C.J.S. Cemeteries § 37.

9-1003. Attachment of remains—misdemeanor. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a high misdemeanor.

History: En. Sec. 22, Ch. 35, L. 1949.

Cemeteries⇐22.
14 C.J.S. Cemeteries § 37.

Compiler's Note

Sections 23 to 29 of this act are compiled as secs. 9-601 to 9-607.

9-1004. Destruction or mutilation of mausoleum or columbarium—interference with interment—misdemeanor. Every person is guilty of a high misdemeanor who unlawfully or without right wilfully does any of the following:

(a) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes any crypt, niche, monument, memorial or marker in a mausoleum or columbarium, or any gate, door, fence, wall, post or railing, or any en-

closure for the protection of a crypt or niche or any other property in a mausoleum or columbarium.

(b) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within a mausoleum or columbarium or within the limits of any grounds within which such mausoleum or columbarium is located.

(c) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a mausoleum or columbarium, or funeral establishment, or engaged in a funeral service, or an interment.

History: En. Sec. 30, Ch. 35, L. 1949.

Cemeteries⇦22.
14 C.J.S. Cemeteries § 37.

9-1005. Civil liability. Any person violating any provision of section 30 [9-1004] of this act is liable, in a civil action by and in the name of the mausoleum-columbarium authority to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed.

History: En. Sec. 31, Ch. 35, L. 1949.

Cemeteries⇦20.
14 C.J.S. Cemeteries § 36.

9-1006. Exceptions from violation of preceding sections. The provisions of section 30 [9-1004] of this act do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority of anything placed in or upon any portion of its mausoleum or columbarium, or the grounds within which the same are situated, in violation of any of the rules or regulations of the mausoleum-columbarium authority, nor to the removal of anything placed in said mausoleum or columbarium or the grounds within which the same are situated, by or with the consent of the mausoleum-columbarium authority which has become in a wrecked, unsightly or dilapidated condition.

History: En. Sec. 32, Ch. 35, L. 1949.

Compiler's Note

Section 33 of this act is compiled as sec. 9-608.

9-1007. Converted or altered building subject to act. A building not erected for, or which is not used as, a place of interment of human remains which is converted or altered for such use by a mausoleum-columbarium authority is subject to this act.

History: En. Sec. 116, Ch. 35, L. 1949.

Cemeteries⇦1.
14 C.J.S. Cemeteries § 2.

Compiler's Note

Section 115 of this act is compiled as sec. 9-927.

9-1008. Requirements as to construction or alteration of buildings. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will insure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science.

History: En. Sec. 117, Ch. 35, L. 1949.

Cemeteries⇦1.
14 C.J.S. Cemeteries § 2.

9-1009. Fireproof construction of crematories—exceptions. No crematory shall hereafter be constructed or established by a mausoleum-columbarium authority unless the crematory is of fireproof construction and there is in connection therewith either a fireproof columbarium or a fireproof mausoleum, amply equipped at all times for the interment of remains of bodies cremated at the crematory and a fireproof room for temporary care of cremated remains. Nothing herein contained shall prevent existing crematories from being repaired, altered or reconstructed. Nothing in this act shall prohibit the cremation of human remains in existing crematories or the temporary storage of cremated remains.

History: En. Sec. 50, Ch. 35, L. 1949.

Compiler's Note

Sections 49, 51 of this act are compiled as secs. 9-714, 9-611 respectively.

9-1010. Fireproof construction of mausoleums and columbariums. All mausoleums or columbariums hereafter constructed shall be of class "A" fireproof construction.

History: En. Sec. 118, Ch. 35, L. 1949.

9-1011. Construction to comply with city ordinances. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class "A" construction, the provisions of the local ordinances and specifications shall not be violated.

History: En. Sec. 119, Ch. 35, L. 1949.

9-1012. Violations of act a misdemeanor. Every person who violates any provision of this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case.

History: En. Sec. 120, Ch. 35, L. 1949.

Cemeteries⇐22.
14 C.J.S. Cemeteries § 37.

9-1013. Construction in violation of act a public nuisance—penalty. Every owner or operator of a mausoleum or columbarium erected in violation of this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00) or by imprisonment in a county jail for not less than one (1) month nor more than six (6) months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case.

History: En. Sec. 121, Ch. 35, L. 1949.

Nuisance⇐61.
66 C.J.S. Nuisance § 42.

9-1014. Exceptions from act. The provisions of this act relating to private mausoleums and columbariums do not apply to any of the following:

(a) Any religious corporation, church, religious society or denomination, corporation sole administering temperalities of any church or religious society or denomination, or any cemetery, mausoleum or columbarium organized, controlled, and operated by any of them.

(b) Any county, town or city cemetery, mausoleum or columbarium.

(c) Provided, however, that no condition or section or provision of this act shall or may be so construed or interpreted as to apply to any act or in

any way pertain to or affect any Montana mausoleum corporation now in existence, operating under Montana charter dated prior to the year 1920 A. D.

History: En. Sec. 122, Ch. 35, L. 1949.

Separability Clause

Section 123, Ch. 35, L. 1949, read: "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act."

TITLE 10—CHILDREN AND CHILD WELFARE

Chapter 5. Dependent and neglected children—proceedings for protection, 10-524, 10-525.
6. Juvenile courts and proceedings against juvenile delinquents, 10-603, 10-622, 10-628.
7. Child adoption agencies, 10-701 to 10-706.

CHAPTER 1—STATE ORPHANS' HOME AT TWIN BRIDGES

10-122 to 10-125. (1507 to 1510) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 133, Laws 1911), relating to the Montana children's home society, were repealed as Secs. 1507 to 1510, Revised Codes 1935, by Sec. 2, Ch. 181, Laws 1949.

CHAPTER 2—CHILD LABOR—PROHIBITIONS

10-201. (3095) Employment of children under sixteen years, etc.

Inclusion or exclusion of day of birth in computing age under statute restricting hours of work. 5 ALR 2d 1154.

Child labor as subject of collective bargaining. 12 ALR 2d 280.

Nonprofit charitable institution as within operation of Child Labor Act. 36 ALR 2d 128.

Validity of minimum wage statutes relating to private employment of women and minors. 39 ALR 2d 744.

CHAPTER 4—DIVISION OF MATERNAL AND CHILD HEALTH OF STATE BOARD OF HEALTH

10-401 to 10-408. (2503 to 2510) Repealed.

Repeal

These sections (Secs. 1 to 8, Ch. 121, L. 1917; amd. Sec. 1, Ch. 22, L. 1945), relating to the division of maternal and child health of state board of health, were repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

Section 10-524. Payment for board and room of dependent and neglected children—reimbursement by county.
10-525. Recovery from parents—division between state and county.

10-511. (10472) Punishment of parents.

Divorce—Power of Court

A court which severs the marriage ties by granting a valid decree of divorce possesses the necessary power to compel the ex-husband to support his minor children. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

Failure to provide medical attention for child as criminal neglect. 12 ALR 2d 1047.

What constitutes abandonment or desertion of child by its parent or parents within purview of adoption laws. 35 ALR 2d 662.

10-524. Payment for board and room of dependent and neglected children—reimbursement by county. Whenever agreements are entered into by the department of public welfare for placing dependent and neglected children in approved family foster homes, it shall be the duty of the state department to pay by its check or draft, each month, from any funds ap-

propriated for that purpose, the entire amount agreed upon for board and room of such children.

On or before the twentieth of each month the state department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the state department within twenty days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949.

Title of Act

An act providing for method of payment for board and room of dependent and neglected children placed in approved family foster homes by the department of public welfare and for reimbursement by counties to the state department for one-half of such payments and the distribution of any recoveries and repealing all acts and parts of acts in conflict herewith.

Infants⇐16.11.
43 C.J.S. Infants § 100.

10-525. Recovery from parents—division between state and county. In the event any recovery is made from the parent or parents of children for whom board and room has been paid by the state and county any amount so recovered shall be divided equally between the state department and the county of residence of such child or children.

History: En. Sec. 2, Ch. 48, L. 1949.

Repealing Clause

Section 3 of Ch. 48, L. 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section 10-603. Jurisdiction.
10-622. Probation officers—appointments—removal—salaries.
10-628. Juvenile court committee.

10-601. Construction and purpose of the act.

Disqualification of Judge

Section 93-901 which governs the removal of judges in civil actions and matters applies to juvenile delinquency proceedings as it is the legislative intent that delinquency proceedings are to be treated as civil proceedings. State ex rel. Ostoj v. McClernan, — M —, 284 P 2d 252, 254.

10-602. Definitions.

References

Cited in State ex rel. Bresnahan v. District Court, 127 M 310, 263 P 2d 968, 969; State ex rel. Ostoj v. McClernan, — M —, 284 P 2d 252, 253.

10-603. Jurisdiction. The district courts of the several counties of this state shall have jurisdiction in all cases coming within the terms and provisions of this act. It is provided that the district court shall be called the juvenile court when acting under the juvenile court laws.

The juvenile court shall have exclusive original jurisdiction in proceedings:

(a) concerning any child who is delinquent;

(b) concerning any person under twenty-one (21) years of age charged with having violated any law of the state, other than those laws relating to the commission of or attempt to commit the criminal offenses mentioned in subdivision (2) (b) of section 10-602, or any person charged with having

violated any ordinance of any city or town, prior to having become eighteen (18) years of age;

(c) concerning parents who wilfully and knowingly fail to provide their children with proper food, clothing, medical attention, and opportunity to attend school.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue under the jurisdiction of the court until he becomes twenty-one (21) years of age unless discharged prior thereto, or is confined in a state custodial or correctional institution. In trials under this act the child or parent or guardian or other person having the care, custody or control of such child complained against, or any person interested in such child, shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge of his own motion may call a jury to try such case, except that the jurisdiction of the court shall end if the child is committed to a state institution or agency.

The district court as distinguished from the juvenile court shall have jurisdiction, as in all other criminal cases, of those offenses listed in subdivision (2) (b) of section 10-602, where children over the age of sixteen (16) are accused.

History: En. Sec. 3, Ch. 227, L. 1943; amd. Sec. 1, Ch. 123, L. 1945; amd. Sec. 2, Ch. 276, L. 1947; amd. Sec. 1, Ch. 124, L. 1957.

Amendment

The 1957 amendment substituted "subdivision (2)(b)" for "subdivision (2)(a)" in subd. (b) of this section.

Repealing Clause

Section 2 of Ch. 124, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Construction

A rule of grammatical construction such as "the use of the disjuntive conjunction 'or' separates and denotes an alternative, and that which appears in the clause following cannot modify that which precedes the disjunctive conjunction 'or'" is merely an aid in interpretation, and if the text of the statute indicates a legislative intention contrary to that which would follow from the application of the rules of grammar, then the rule of grammatical construction must give way. State ex rel. Bresnahan v. District Court, 127 M 310, 263 P 2d 968, 969.

It is the child as defined in section 10-602 to which this act is primarily applicable and the one with whom the juvenile courts and authorities are ordinarily concerned. When such person arrives at the age of eighteen he is an adult and under the criminal laws of this state is subject to the same rules of society as is any other adult no matter what his age may be. Exceptions found in the act are those regarding the person between eighteen and twenty-one and such exceptions have to do with detention of such person and trial of such person in the offense for which he or she is charged occurred prior to the time he or she reached the age of eighteen. State ex rel. Bresnahan v. District Court, 127 M 310, 263 P 2d 968, 969. (See, however, dissenting opinion in State ex rel. Bresnahan v. District Court, 127 M 310, 263 P 2d 968, 970.)

Subdivision (b) refers to persons under twenty-one charged with a crime committed by said person prior to the time he or she became eighteen, thus a boy eighteen years old who committed attempted rape is under the jurisdiction of the district court and not under the exclusive jurisdiction of the juvenile court. State ex rel. Bresnahan v. District Court, 127 M 310, 263 P 2d 968, 969. (See, however, dissenting opinion in State ex rel. Bresnahan v. District Court, 127 M 310, 263 P 2d 968, 970.)

Disqualification of Judge

Section 93-901 which governs the removal of judges in civil actions and matters applies to juvenile delinquency proceedings as the legislative intent as found in the juvenile statutes indicates that delinquency proceedings are to be treated as civil proceedings. State ex rel. Ostoj v. McClernan, — M —, 284 P 2d 252, 254.

10-611. Hearing—judgment.

Operation and Effect

The prohibition in this section, which prohibits the "disposition of a delinquent child or evidence given in the court" from being used as evidence in any other case or proceeding against the child, applies only where the child is a party in a later proceeding; where the child is a witness in a later case, evidence of contradictory statements made in the juvenile court may be used for the purpose of impeachment. State v. Searle, 125 M 467, 239 P 2d 995, 998.

10-617. Penalty for improper and negligent training of children.

Operation and Effect

The fact that officers may have violated this law by giving money to a minor for him to buy liquor from the defendant in order to procure evidence does not absolve the defendant from conviction for selling liquor to a minor. State v. Parr, — M —, 283 P 2d 1086, 1090. (Dissenting opinion, — M —, 283 P 2d 1086, 1090.)

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed four thousand eight hundred dollars ($4,800.00), or on a per diem basis for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer, or four thousand three hundred twenty dollars ($4,320.00) per year.

History: En. Sec. 21, Ch. 227, L. 1943; amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957.

Amendments

The 1951 amendment raised the maximum salary of the chief probation officer from $3,000 to $3,200 and the maximum salary for assistants from $2,100 to $2,500.

The 1953 amendment raised the maximum salary of the chief probation officer from $3,200 to $3,600 and the maximum for assistants from $2,500 to $2,900.

The 1955 amendment raised the maximum salary of the chief probation officer from $3,600 to $4,500; in the second paragraph deleted the words "and stenographers" which appeared after the words "deputy probation officers" and changed the maximum salary for assistants from $2,900 to not exceed ninety per cent of the salary of the chief probation officer or $4,050.

The 1957 amendment in the first paragraph substituted the word "may" for "shall" in the first sentence; raised the maximum salary of the chief probation officer from $4,500 to $4,800 and deleted from the end of said paragraph a sentence which read "In the absence of such appointment of the chief probation officer, it shall be the duty of the sheriff of the county to perform all the duties of the chief probation officer in this act enumerated without additional compensation, as directed by the court" and in the second paragraph raised the maximum salary for assistants from $4,050 to $4,320.

Repealing Clauses

Section 2 of Ch. 27, Laws 1951; Sec. 2 of Ch. 112, Laws 1953; Sec. 2 of Ch. 36,

Laws 1955 and Sec. 2 of Ch. 177, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 27, Laws 1951 provided the act should be in effect from and after its passage and approval. Approved February 13, 1951.

Section 3 of Ch. 112, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

10-628. Juvenile court committee. In every county of the state the judge having jurisdiction must appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, which committee shall be designated as a juvenile court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957.

Amendment

The 1957 amendment substituted "must" for "may" and the words "composed of not less than three (3) nor more than seven (7) reputable citizens" for "composed of seven reputable citizens of both sexes."

Repealing Clause

Section 2 of Ch. 128, Laws 1957 repealed all acts and parts of acts in conflict therewith.

10-630. Appeals.

References

Cited or applied in State ex rel. Ostoj v. McClernan, — M —, 284 P 2d 252, 254.

CHAPTER 7—CHILD ADOPTION AGENCIES

Section 10-701. Definitions.
10-702. License required—term of license—no fee charged.
10-703. Licenses issued by department of public welfare—rules and regulations—minimum requirements of licensees.
10-704. Investigation of agencies—cancellation of licenses.
10-705. Certified copy of license furnished for adoption proceedings.
10-706. Operation without license—penalty.

10-701. Definitions. The word "person" where used in this act, shall include any individual or individuals, partnership, voluntary association or corporation.

The word "agency" where used in this act, includes any person not related by blood or marriage to any minor child to be adopted. This act shall not apply to the state orphan's home of the state of Montana.

History: En. Sec. 1, Ch. 179, L. 1949.

Title of Act

An act to define, regulate and license agencies for the adoption of minor children, setting up minimum requirements for such agencies, providing for certified copies and cancellation of licenses, providing penalties for the violation of this act and repealing all acts and parts of acts in conflict herewith.

Cross-Reference

Adoption proceedings, secs. 61-127 to 61-140.

Licenses⇨11(1).

53 C.J.S. Licenses § 30.

1 Am. Jur. 621, Adoption of Children, §§ 1 et seq.

Necessity of consent of parent under statute providing for adoption of abandoned or deserted child. 35 ALR 2d 662.

What constitutes abandonment or desertion of child by its parent or parents within purview of adoption laws. 35 ALR 2d 662.

10-702. License required—term of license—no fee charged. No person shall act as an agency for procuring or selecting proposed adoptive homes or placing minor children in proposed adoptive homes, or soliciting persons to adopt minor children or arranging for persons to adopt minor children who is not the holder of a license secured under the provisions of this act. Licenses shall be valid for the balance of the calendar year in which issued. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 179, L. 1949.

10-703. Licenses issued by department of public welfare—rules and regulations—minimum requirements of licensees. The state department of public welfare is hereby authorized and directed to issue licenses to persons now acting as agencies for procuring the adoption of minor children, or who may desire to operate as such agency in the future, and to prescribe the conditions upon which such licenses shall be issued, and to make such rules and regulations for the conduct of the affairs of such agencies as are consistent with the welfare of such minor children, provided, however, that said state department of public welfare must issue licenses to agencies meeting the the following minimum requirements:

(1) The chief function of the agency must be the care and placement of minor children.

(2) The agency must operate on a non-profit basis and be financially responsible in and for its operation.

(3) The directing or managing personnel of the agency must be qualified both on the basis of professional education and personality.

(4) Complete records must be kept of both the minor children and adopting parents with which the agency deals, and such records must be confidential.

(5) The agency must follow the practice of verifying that the child is legally available for adoption and of not completing the adoption until the child has been in the proposed adoptive home for a trial period.

(6) The agency must have and use facilities for making a social study of the child and proposed adoptive parents before placement of the child, particularly with regard to (a) the physical and mental health, emotional stability, and personal integrity of the adopting parents, and their ability to promote the child's welfare; and (b) the physical and mental condition of the child, and its family background.

(7) The agency must agree to co-operate with courts having jurisdiction in adoptive matters, and with other public agencies having to deal with the welfare of minor children.

(8) Any such agency must annually submit a full, complete and true financial statement to the department of public welfare, and such statement shall contain a full accounting of the operations of such agency during the preceding year. When the state department of public welfare finds, upon the basis of said report, or upon its own investigation, that any such agency has not conducted, or is financially incapable of conducting, its operations according to the standards established pursuant to this act, then the department is precluded from the issuance of, or continuance in effect of, any such license for said agency for the subsequent year.

History: En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957.

Amendment

The 1957 amendment in subd. (2) added the words "and be financially responsible in and for its operation" and added subd. (8).

Repealing Clause

Section 2 of Ch. 156, Laws 1957 repealed all acts and parts of acts in conflict therewith.

10-704. Investigation of agencies—cancellation of licenses. The state department of public welfare shall have the power and authority, through its duly authorized representative, to investigate the operations of any such licensed agencies and to cancel licenses theretofore issued for failure to observe prescribed rules and regulations, or to maintain minimum requirements as in the preceding section of this act set out. Such agencies shall give to such representatives all information requested and afford them every reasonable facility for observing the operation of such agencies.

History: En. Sec. 4, Ch. 179, L. 1949.

10-705. Certified copy of license furnished for adoption proceedings. Upon the request of any district court, proposed adoptive parents, or agency, a certified copy of any license issued and in good standing shall be furnished by the state department of public welfare for use in any adoption proceeding with which any licensed agency is concerned.

History: En. Sec. 5, Ch. 179, L. 1949.

10-706. Operation without license—penalty. Any person who maintains or conducts an agency for procuring the adoption of minor children, or assists in [the] maintaining or conducting of such agency, without first having obtained a license herein provided, shall be guilty of a felony and upon conviction may be punished by a fine not exceeding one thousand dollars ($1,000.00).

History: En. Sec. 6, Ch. 179, L. 1949.

Compiler's Note

The bracketed word "the" was inserted by the compiler.

Repealing Clause

Section 7 of Ch. 179, L. 1949 repealed all acts and parts of acts in conflict therewith.

TITLE 11—CITIES AND TOWNS

Chapter 4. Additions of platted tracts to cities and towns, 11-403, 11-404.
5. Alteration of boundaries, exclusion and inclusion of territory, 11-511 to 11-513.
6. Plats of cities and towns and additions thereto, 11-614.1.
7. Officers and elections, 11-717, 11-725, 11-726, 11-728 to 11-731.
9. Powers of city and town councils, 11-966.
10. Powers of city and town councils (continued), 11-1001, 11-1015 to 11-1024.
11. Ordinances—initiative and referendum, 11-1104.
12. Contracts and franchises, 11-1202.
13. Presentation and payment of claims—city warrants, 11-1301.
14. Budget system for cities and towns, 11-1408.
18. Police department, metropolitan police law, 11-1801, 11-1806, 11-1815, 11-1821, 11-1823, 11-1825, 11-1831, 11-1832.
19. Fire department—firemen's disability and pension fund, 11-1901, 11-1905, 11-1912, 11-1918, 11-1923, 11-1925, 11-1932, 11-1941.
20. Fire protection in unincorporated towns—fire wardens, companies and districts, 11-2008, 11-2010, 11-2022.
21. Municipal regulation of plumbing—plumbing license, Repealed—Section 12, Chapter 203, Laws of 1949.
22. Special improvement districts, 11-2208, 11-2214, 11-2217 to 11-2220.1, 11-2282, 11-2285 to 11-2287.
23. Municipal bonds and indebtedness, 11-2303, 11-2305, 11-2314.
24. Municipal Revenue Bond Act of 1939, 11-2402 to 11-2404, 11-2407.
28. Vacation and abandonment of streets, parks and townsites, 11-2803.
31. Commission form of government, 11-3123, 11-3135, 11-3136.
32. Commission-manager form of government, 11-3218.1, 11-3248, 11-3253, 11-3286.
36. Metropolitan sanitary districts, Repealed—Section 14, Chapter 185, Laws of 1957.
37. Off-street parking facilities, 11-3701 to 11-3725.
38. City or city-county planning boards, 11-3801 to 11-3858.

CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

Section 11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.
11-404. Land when deemed contiguous.

11-401. (4976) Additions to cities or towns.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR 2d 1279.

11-403. (4978) **Extension of boundaries to include contiguous platted tracts or other parcels of land.** (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by resolution duly and

regularly passed and adopted, it will be to the best interest of such city and the inhabitants thereof, and of the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders, if any, of the territory proposed to be embraced.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and caused to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a reso-

lution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision 2 hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957.

Compiler's Note

Section 2 of Ch. 239, Laws 1957 read: "This act shall not, and nothing contained herein shall repeal or amend or be construed to repeal or amend sections 11-506, 11-507, 11-508, 11-509, and 11-510, Revised Codes of Montana, 1947, or as amended or re-enacted, which provide an alternative method of annexation of territory to certain cities and towns."

Amendment

The 1957 amendment in subd. (1) inserted after the words "in which the same are situated" the words "or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes," and immediately following the words "and which" inserted the words "platted or unplatted land." The words "or unplatted land for which a certificate of survey has been filed" were inserted each time they appear after the words "parcels of land" and near the end of subd. (1) inserted the words "if any."

Construction of regulations as to subdivision maps or plats with respect to question of effect on corporate limits of filing or vacation of plat. 11 ALR 2d 567, 598.

11-404. Land when deemed contiguous. Tracts or parcels of land, proposed to be annexed to a city or town, under the provision of section 11-403, Revised Codes of the state of Montana, 1947, shall be deemed contiguous to such city or town, even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955.

Amendment

The 1955 amendment added the words "stream, river" between the words "ditch" and "or."

Repealing Clause

Section 2 of Ch. 16, Laws 1955 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 16, Laws 1955 provided this act should be in effect from and after its passage and approval. Approved February 5, 1955.

11-405. (4979) **Election on the question of annexation.**

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR 2d 559.

CHAPTER 5—ALTERATION OF BOUNDARIES, EXCLUSION AND INCLUSION OF TERRITORY

Section 11-511. Contiguous land owned by government—desire for annexation—procedure.
11-512. Land deemed contiguous.
11-513. Validation of prior annexations of government land.

11-501. (4979.1) Alteration of boundaries of cities and towns, etc.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR 2d 1279.

11-507. Submission of question of annexation—election, etc.

Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation. 18 ALR 2d 1255.

11-511. Contiguous land owned by government—desire for annexation—procedure. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana, or by any agency, instrumentality, or political subdivision of either, or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous, and may be annexed thereto and made a part thereof, in the following manner:

1. The administrative head of the owner of the land, or the administrative head of the holder of a beneficial interest in the land, shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of, or the holder of, the beneficial interest in the land desires to have it annexed. Whereupon, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

2. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for two successive weeks, a notice that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

3. At the time and place set for the public hearing aforesaid, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation, and if the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land.

4. Within thirty (30) days after the passage and approval of said resolution, a copy thereof duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located. Said resolution shall become effective thirty (30) days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: En. Sec. 1, Ch. 189, L. 1957.

Title of Act

An act to provide for the annexation by any municipality of land contiguous thereto which is owned by the United States, the state of Montana, or any agency, instrumentality, or political subdivision of either, or in which any of the foregoing have a beneficial interest; providing for the method of annexation; confirming prior annexations of such land; and providing an effective date.

11-512. Land deemed contiguous. The land proposed to be annexed to a municipality under the provisions of this act shall be deemed contiguous to such municipality, even though such land may be separated from such municipality by a street, or other roadway, a sidewalk, or by a public way of any kind, or by an irrigation ditch or drainage ditch, or by some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957.

11-513. Validation of prior annexations of government land. Any annexation heretofore made of land with respect to which the United States or the state of Montana, or any agency, instrumentality or political subdivision of either, was at the time of annexation either owner or possessor of a beneficial interest therein, is hereby validated and confirmed.

History: En. Sec. 3, Ch. 189, L. 1957.

Effective Date

Section 4 of Ch. 189, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section 11-614.1. Approval of plats before filing—by whom to be done.

11-602. (4981) What plat must contain.

References

Cited or applied in Smith v. Town of Hot Springs, 125 M 458, 240 P 2d 249.

Municipal Corporations⇐43.
62 C.J.S. Municipal Corporations § 83.

11-606. (4985) Certificate of dedication and form.

Operation and Effect

Where the plat refers to lot 4 as a "public park" and the dedication was in the form prescribed by this section and refers to the plat, but does not include the word "parks" in the dedication, the court is justified in treating lot 4 as a public park and upholding the city council's vacating of the lot as a public park. Smith v. Town of Hot Springs, 125 M 458, 240 P 2d 249.

Municipal Corporations⇐43.
62 C.J.S. Municipal Corporations § 83.

11-614.1. Approval of plats before filing—by whom to be done. The city or town council, if the area lies within or partly within the boundaries of any city or town, or the board of county commissioners, if the area lies wholly outside the boundaries of any city or town, shall inspect all plats prepared under the provisions of section 11-614 and indicate their approval thereon in writing before the county clerk and recorder shall accept said plats for filing. In all cases where the survey plat indicates that the property is being subdivided or platted for building purposes, the city or town council or the board of county commissioners, as the case may be, may require the plat to be prepared in accordance with all the requirements for plats of cities or towns or additions thereto.

History: En. Sec. 1, Ch. 82, L. 1953.

Title of Act

An act relating to the filing of plats and providing for the inspections of plats by the county commissioners and the city or town council, and authorizing such council or board of county commissioners to make certain requirements before the filing thereof.

Repealing Clause

Section 2 of Ch. 82, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Municipal Corporations⇐43.
62 C.J.S. Municipal Corporations § 83.

CHAPTER 7—OFFICERS AND ELECTIONS

Section 11-717. Election judges and clerks—voting places.
11-725. Salaries and qualifications of mayor and aldermen.
11-726. Salaries of police judges.
11-728. Salary of city treasurer.
11-729. Salary of city attorney.
11-730. Salary of chief of police.
11-731. Salary of city or town clerk.

11-717. (5011) **Election judges and clerks—voting places.** The council or other governing body must appoint judges and clerks of election, and places of voting. Where the city or town is divided into wards there must be at least one (1) voting place in each ward and there may be as many more as the council or other governing body shall fix, and the elector must vote in the ward in which he resides. In cities and towns divided into wards the election precincts must correspond with the wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides. In cities and towns operating under the commission, or the commission-manager plan of municipal government, where there are no wards for election purposes and the officers of the city or town are elected at large, the election precincts shall correspond with the election precincts in such city or town as fixed by the board of county commissioners for state and county elections, but such precincts may be by the city commission divided into as many voting precincts, to facilitate the voting and counting of the vote, as the city commission shall by ordinance provide, and the elector shall vote in the voting precinct so designated, in which he resides. For all municipal elections the city council or other governing body may appoint a second or additional board of election judges for any voting precinct in which there were cast three hundred and fifty (350) or more votes in the last general city election or in which council or other governing body believes as many as three hundred and fifty (350) ballots will be cast in the next general city election, and such additional board of election judges shall have the same powers and duties, and under the same conditions, as the second or additional board of election judges for general elections appointed by boards of county commissioners under the provisions of section 23-601. Provided that in municipal corporations of less than one thousand five hundred (1,500) population, as determined by the last official census, the council or other governing body may by ordinance provide that there shall be but one polling or voting place for municipal elections, notwithstanding the number of wards or precincts in the municipality otherwise provided for. All municipal elections must be conducted in accordance with the general laws of the state of Montana relating to such election.

History: En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955.

Amendment

The 1955 amendment deleted a sentence immediately preceding the proviso clause which read: "In all cities and towns where voting machines are used, the city council or other governing body must arrange the precincts so that there will be no more than six hundred (600) votes in any voting precinct."

Effective Date

Section 2 of Ch. 14, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 5, 1955.

11-725. (5019) **Salaries and qualifications of mayor and aldermen.** The annual salary of a mayor of a city of the first class must not exceed five thousand four hundred dollars ($5,400.00); and the annual salary of the mayor of a city of the second class must not exceed three thousand dollars ($3,000.00); and the annual salary of the mayor of a city of the third class must not exceed one thousand five hundred dollars ($1,500.00); and each alderman in a city of the first class may be allowed and paid not exceeding twelve dollars ($12.00) per diem, to be fixed by ordinance, for each day of session held by city council; provided, that no alderman shall be paid for more than five (5) days' service during any one (1) month; and aldermen of cities of the second and third class may be allowed and paid not exceeding twelve dollars ($12.00) per diem for each day of session, to be fixed by ordinance, but no alderman shall be paid for more than two (2) days' service during any one (1) month. The council of any town may by ordinance set compensation for a mayor and alderman at two dollars ($2.00) per meeting but in no event shall they be paid to exceed three (3) meetings per month. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955.

Amendments

The 1949 amendment raised the compensation as follows: Mayor, first class city, from $4,000 to $4,400; mayor, second class city, from $2,000 to $2,400; mayor, third class city, from $600 to $1,000; aldermen, from six dollars to ten dollars per diem.

The 1951 amendment raised the compensation of mayor in first class cities from $4,400 to $4,800, in second class cities from $2,400 to $2,700, and in third class cities from $1,000 to $1,250.

The 1953 amendment raised the compensation of mayor in first class cities from $4,800 to $5,400, in second class cities from $2,700 to $3,000, in third class cities from $1,250 to $1,500; raised the per diem for aldermen in first class cities from $10.00 to $12.00, in second and third class cities from $10.00 to $12.00; and raised the amount a town council may set as compensation for a mayor and alderman from $1.00 per meeting to $2.00 per meeting.

The 1955 amendment made no change in this section.

11-726. (5020) **Salaries of police judges.** The annual salary and compensation of police judges must be fixed by ordinance, and in a city of the first class must not exceed, for all services rendered, forty-two hundred dollars ($4,200.00); and in a city of the second class must not exceed two thousand one hundred dollars ($2,100.00); and in a city of the third class must not exceed one thousand dollars ($1,000.00); and, in addition, a police judge is entitled to receive in all civil cases the fees which are now or may hereafter be allowed justices of the peace. In all criminal actions or proceedings arising under the criminal laws of the state, when acting as a justice of the peace or committing magistrate, he must receive no compensation whatever; provided, however, that none of the provisions of this act shall affect cities operating under the commission form of government.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1953.

Amendment

The 1953 amendment raised the compensation for police judges in cities of the first class from $3,000 to $4,200, in second class cities from $1,500 to $2,100, in third

class cities from $600 to $1,000, and deleted the words "with a population in excess of fifty thousand inhabitants" appearing after the words "city of a first class" in the first sentence.

11-728. (5022) **Salary of city treasurer.** The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, (except, however, in cases where a city of the third class or a town owns and operates a public utility or utilities and receives revenue therefrom as hereafter in this section provided) and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed forty-five hundred dollars ($4,500.00), in cities of the second class must not exceed thirty-one hundred dollars ($3,100.00), and in cities of the third class it must not exceed fifteen hundred dollars ($1,500.00), and in towns it must not exceed twelve hundred dollars ($1,200.00); provided, however, that where a city of the third class, or a town shall own and operate a public utility or utilities such as water supply, water works, gas, lighting system, or utilities similar to the foregoing, and receives the revenue derived therefrom, then the treasurer of such city, or town, may be paid additional salary or compensation to be fixed by ordinance and the duties of the treasurer with reference to the collection and safekeeping of the revenues derived from such public utilities shall likewise be fixed by ordinance and the amount of such additional salary or compensation shall be in accordance with the additional duties and responsibilities placed upon the treasurer by reason of such public utility or utilities and shall be in such amount as the council may determine.

History: En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955.

Amendments

The 1953 amendment raised the compensation of city treasurers in cities of the first class from $3,600 to $4,200, in second class cities from $2,400 to $2,800, in third class cities from $900 to $1,200, and in towns from $600 to $900.

The 1955 amendment raised the compensation of city treasurers in cities of the first class from $4,200 to $4,500.00, in second class cities from $2,800 to $3,100, in third class cities from $1,200 to $1,500, and in towns from $900 to $1,200.

11-729. (5023) **Salary of city attorney.** The annual salary and compensation of the city attorney must be fixed by ordinance, and must not exceed, in cities of the first class, four thousand five hundred dollars ($4,500.00), and in cities of the second class must not exceed three thousand dollars ($3,000.00), and in cities of the third class must not exceed one thousand eight hundred dollars ($1,800.00), which compensation shall be in full for all services rendered in any capacity, and no fee, percentage or additional compensation must be given to or allowed him.

History: En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955.

Amendments

The 1949 amendment raised the salary of the city attorney in cities of the first class from $3,000 to $3,300, in cities of the second class from $1,500 to $1,800, and in cities of the third class from $1,000 to $1,200.

The 1951 amendment raised the compensation of city attorney in cities of the first class from $3,300 to $3,600, in cities of the second class from $1,800 to $2,100, and in cities of the third class from $1,200 to $1,500.

The 1953 amendment raised the compen-

sation of the city attorney in cities of the first class from $3,600 to $4,500, in second class cities from $2,100 to $3,000, and in third class cities from $1,500 to $1,800.

The 1955 amendment made no change in this section.

11-730. (5024) **Salary of chief of police.** That from and after July 1, 1957 the annual salary and compensation of the chief of police shall be not less than, in cities of the second class, four hundred twenty-five dollars ($425.00) per month for the first year of service, and thereafter, of at least four hundred twenty-five dollars ($425.00) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service; and, in cities of the third class the salary and compensation of the chief of police shall be not less than three hundred twenty-five dollars ($325.00) per month for the first year of service, and thereafter, of at least three hundred twenty-five dollars ($325.00) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum salary of the chief of police in cities of the second and third class, the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911; re-en. Sec. 5024, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1943; amd. Sec. 1, Ch. 234, L. 1947; amd. Sec. 1, Ch. 10, L. 1951; amd. Sec. 1, Ch. 30, L. 1957.

Amendments

The 1951 amendment raised the maximum salary for cities of second class from $210 to $500 a month and for third class cities from $190 to $300 a month.

Prior to the 1957 amendment this section read as follows: "The annual salary and compensation of the chief of police must be fixed by ordinance, and must not exceed, in cities of the second class, five hundred dollars ($500.00) per month, and in cities of the third class not to exceed three hundred dollars ($300.00) per month."

Repealing Clauses

Section 2 of Ch. 10, Laws 1951 and Sec. 2 of Ch. 30, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Salary of chief of police in cities of the first class, sec. 11-1815.

11-731. (5025) **Salary of city or town clerk.** The annual salary and compensation of the city or town clerk must be fixed by ordinance, and in cities of the first class must not exceed five thousand four hundred dollars ($5,400.00); in cities of the second class must not exceed four thousand two hundred dollars ($4,200.00). In cities of the third class the compensation must not exceed two thousand seven hundred dollars ($2,700.00), and in towns must not exceed one thousand eight hundred dollars ($1,800.00) provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955.

Amendments

The 1949 amendment raised the maximum salary in cities of the first class from $3,600 to $4,000, in cities of the second class from $2,400 to $2,800, in cities of the third class from $1,200 to $1,600, and in towns from $600 to $1,000.

The 1951 amendment raised the maximum salaries in cities of the first class from $4,000 to $4,500, in cities of the second class from $2,800 to $3,300, in cities of the third class from $1,600 to $2,000, and in towns from $1,000 to $1,200.

The 1953 amendment raised the salary and compensation of the city or town clerk in first class cities from $4,500 to $5,100, in second class cities from $3,300 to $3,900, in third class cities from $2,000 to $2,400, and in towns from $1,200 to $1,500.

The 1955 amendment raised the salary and compensation of the city or town clerk in first class cities from $5,100 to $5,400, in second class cities from $3,900 to $4,200, in third class cities from $2,400 to $2,700, and in towns from $1,500 to $1,800.

Repealing Clauses

Section 4 of Ch. 188, L. 1949; Sec. 4 of Ch. 115, L. 1951; Sec. 6 of Ch. 76, L. 1953 and Sec. 5 of Ch. 170, L. 1955 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 5 of Ch. 188, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 3, 1949.

Section 5 of Ch. 115, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Section 7 of Ch. 76, L. 1953 provided the act should be in effect from and after its passage and approval. Approved February 25, 1953.

Section 6 of Ch. 170, L. 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section 11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.

11-901. (5039) Powers of city councils.

Ordinances Covering Same Subject as State Laws

Since state traffic laws in effect in 1951 covered offenses both within and without municipalities, a city ordinance prohibiting drunken driving and providing a penalty therefor would be void. A municipal ordinance punishing an act made penal by a state law then existing, covering the same subject-matter, must yield to the state law. City of Billings v. Herold, — M —, 296 P 2d 263, 271. (Dissenting opinion, — M —, 296 P 2d 263, 271.)

Parking Meters

A city has the power to install parking meters. Glodt v. Missoula, 121 M 178, 190 P 2d 545, 549.

Right of labor union or other organization for promotion or protection of interest of members to challenge validity of ordinance on behalf of members. 2 ALR 2d 917.

Municipal regulation of practice of photography. 7 ALR 2d 422, 426.

Municipal establishment or operation of off-street public parking facilities. 8 ALR 2d 373.

Taxicab or hack stands, validity of statute, ordinance, or regulation abolishing or forbidding granting of exclusive rights or franchise to. 8 ALR 2d 574.

Public regulation and prohibition of sound amplifiers or loud speaker broadcasts in streets. 10 ALR 2d 627.

Validity and construction of regulations as to subdivision maps or plats. 11 ALR 2d 524.

Power of city, town, or county or their officials to compromise claim. 15 ALR 2d 1359.

Inclusion of tax exempt property in determining value of taxable property for debt limit purposes. 30 ALR 2d 903.

Installation or operation of parking meters as within governmental immunity from tort liability. 33 ALR 2d 761.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 ALR 2d 1210.

Regulation of watch making, watch repairing and the like. 34 ALR 2d 1326.

Conclusiveness of declaration in ordinance of an emergency. 35 ALR 2d 586.

Operation of garage for maintenance and repair of municipal vehicles as governmental function. 36 ALR 2d 944.

Liability of municipalities for pollution of subterranean waters. 38 ALR 2d 1305.

11-905. (5039.4) Building or hiring and lighting and heating, etc.

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710.

11-906. (5039.5) Streets, alleys, sidewalks, parks, etc.

Bond Issues

This section does not give the city or town council the power to incur indebtedness or issue bonds for street purposes. Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Operation and Effect

The means provided by the legislature to carry out the authority created by this section is by means of a special assessment and the creation of a special improvement district under section 11-2201. Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Vacating a Park

Formal action need not be taken to vacate a park. It can be done by acts showing a clear intent to abandon the use of the land as a park. Smith v. Town of Hot Springs, 125 M 458, 240 P 2d 249, 250.

Under this section, a part of a park may be vacated as well as the whole. Smith v. Town of Hot Springs, 125 M 458, 240 P 2d 249, 250.

Municipal establishment or operation of off-street public parking facilities. 8 ALR 2d 373.

11-909. (5039.6) Lighting and cleaning streets, etc.

Parking Meters

This section granting cities power to clean and enforce cleaning of the streets would not constitute parking meters a nuisance and obstruction of the streets. Glodt v. Missoula, 121 M 178, 190 P 2d 545, 548.

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710; Marchi v. Brackman, — M —, 299 P 2d 761, 764.

11-918. (5039.15) Licensing, taxing and regulation.

Municipal regulation of practice of photography. 7 ALR 2d 422, 426.

Regulation of watch making, watch repairing and the like. 34 ALR 2d 1326.

Liability of municipality in damages for its refusal to grant, permit, license or franchise. 37 ALR 2d 694.

11-927. (5039.24) Prevention of and punishment for disturbing, etc.

Public regulation and prohibition of sound amplifiers or loud speaker broadcasts in streets. 10 ALR 2d 627.

11-937. (5039.34) Jail—maintaining and governing.

References

Cited in Deitrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710.

11-947. (5039.44) Detention hospitals.

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710.

11-949. (5039.46) Officers' and employees' duties and compensation.

Cross-Reference

Vacations for employees, secs. 59-1001 to 59-1007.

Municipal Corporations⇐589.
62 C.J.S. Municipal Corporations § 313.

11-955. (5039.52) Workhouse—construction authorized—use.

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710.

11-964. (5039.61) Disposal or lease of city property, etc.

Lease to Private Club

Lease of a golf course and part of club house to private club, which contained no provisions safeguarding the rights of the inhabitants of the city and which was not submitted to the voters for approval at a special election, is void. Hames v. Polson, 123 M 469, 215 P 2d 950.

11-966. (5039.63) **Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.** The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes, said words "value of the taxable property" being used herein in the same sense as in section 6 of Article XIII of the Constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten percentum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby, and carried in the affirmative by a vote of the majority of said taxpayers who vote upon such question.

(3) It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to

such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use, and any city or town acquiring property under the laws relating to the taking of private property for public use, shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six (6) months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure and appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

(4) Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source of stream for which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955. See also history of Sec. 11-901.

Compiler's Note

Section 2 of Ch. 152, Laws 1953 is compiled as sec. 11-2305.

Amendments

The 1953 amendment added "reservoirs and reservoir sites," "street and other equipment," and "to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost thereof" to the list of items for which indebtedness can be incurred in subdivision (1); substituted 5% for 3%; the words "value" for "assessed valuation"; and inserted the words "said words 'value of the taxable property' being used herein in the same sense as in section 6 of Article XIII of the Constitution" in the first proviso in subdivision (1); substituted 5% for 3% wherever it appears in subdivision (2) and substituted the words "upon such question" for "at such election" at the end of subdivision (2).

The 1955 amendment in subd. (2) substituted the word "theretofore" for "heretofore" and inserted the words "or for the procurement of a water supply, or for both such purposes," after the word "system" and inserted the words "in the aggregate" between the words "exceed" and "ten."

Special Improvement District Bonds

Where town issued bonds under provisions of Revised Codes 1921, section 5226 (11-2202), providing for the creation of special improvement districts, the bonds were payable from the special improvement district fund and town could not be compelled to pay them from the water fund. State ex rel. Truax v. Lima, 121 M 152, 193 P 2d 1008, 1010.

Street Improvements

This section does not authorize the city or town to incur indebtedness or issue bonds to carry out the power granted by

section 11-906. Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR 2d 559.

Inclusion of tax exempt property in determining value of taxable property for debt limit purposes. 30 ALR 2d 903.

11-968. (5039.65) **Granting of railroad rights of way, etc.**

Duty of railroad company to maintain flagman at crossing. 24 ALR 2d 1161.

11-986. (5039.83) **Acquisition of landing fields and parking areas, etc.**

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 711.

Municipal establishment or operation of off-street public parking facilities. 8 ALR 2d 373.

11-988. (5039.85) **Power of cities and towns to acquire natural gas, etc.**

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710.

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section 11-1001. Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.
11-1015. Parking meters in cities or towns of 2,500 population or less.
11-1016. Referendum on parking meters required before ordinance.
11-1017. Existing meters and ordinances unaffected.
11-1018. Acquisition, construction and maintenance of parking areas—bond issues.
11-1019. Operation of bus lines—contracting indebtedness.
11-1020. Operation subject to Motor Carrier Act—exception.
11-1021. Contracts or lease arrangements with independent carriers of passengers—when authorized—levy of tax.
11-1022. Bids for service—operation of carriers.
11-1023. Contracting with highway commission and/or federal agencies regarding construction or reconstruction of highways, streets, and roads.
11-1024. Group insurance for county, city, and town officers and employees—authority—approval of employees—limit on contribution of governmental unit.

11-1001. (5040.1) **Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.** (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system, to furnish water to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system, to any person, factory, or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at rates established for like use or service to the inhabitants or industries located inside the corporate limits of such city or town, provided that delivery of water by any such city or town to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system to furnish water to the in-

habitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at such rates as to the said city council may seem just and equitable, and such city council is further empowered to make collections for furnishing water in the same manner as collections are made within the corporate limits.

(3) Any person, firm or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system which furnishes water as a public utility, who shall wilfully turn on the water after the same shall have been shut off by or under the direction of the said city for nonpayment of water charges, or who shall unlawfully take water from such water system shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957.

Amendments

The 1955 amendment substituted the words "outside of the corporate limits" for the words "within three miles of the corporate limits" wherever they appear in this section.

The 1957 amendment inserted the word "person," before the word "factory" each time it appears in this section and in subd. (2) deleted the words "having a population of twenty-four thousand (24,000) or more according to the last government census" which appeared after the words "state of Montana."

Repealing Clauses

Section 2 of Ch. 6, Laws 1955 and Sec. 2 of Ch. 63, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 6, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 1, 1955.

Duty of City

A municipality cannot be forced to construct mains beyond its corporate limits solely because it is operating a public utility in the shape of a municipal water system. Crawford v. City of Billings, — M —, 297 P 2d 292, 295.

11-1002. (5041) Regulation of motor vehicles and their speed.

Cross-Reference

Unincorporated towns and villages, county commissioners to regulate parking, sec. 16-1002.

Ordinance Covering Same Subject as State Law

Since state traffic laws in effect in 1951 covered offenses both within and without municipalities, a city ordinance prohibiting drunken driving and providing a penalty therefor would be void. A municipal ordinance punishing an act made penal by a state law then existing, covering the same subject-matter, must yield to the state law. City of Billings v. Herold, — M —, 296 P 2d 263, 271. (Dissenting opinion, — M —, 296 P 2d 263, 271.)

11-1004. (5043) Organized cities and towns authorized to take, etc.

Cross-Reference

See note to 11-1005. Hames v. Polson, 123 M 469, 215 P 2d 950.

11-1005. (5044) Who may make gift, donation, or grant.

Lease to Private Club

Where property was conveyed to city in trust for use for park, recreational ground and golf course purposes, a part of it could not be leased to private club so as to interfere with the public's use of the property. Hames v. Polson, 123 M 469, 215 P 2d 950.

11-1008. (5045) Public baths.

References

Cited in Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710.

11-1015. Parking meters in cities or towns of 2,500 population or less. Any city or town council of any incorporated city or town of twenty-five hundred (2500) population or less is hereby empowered to enact an ordinance or ordinances:

(a) To purchase, rent, lease or otherwise acquire coin operating parking meters, or other devices, or instruments used for the purpose of measuring the duration of time an automobile or other vehicle is parked.

(b) To install, maintain and operate said meters, devices or instruments at or near any public street, highway, avenue or other public place within the corporate limits of such city or town.

(c) To provide for such regulations as necessary to govern the use of its public streets, highways, avenues or other public places for the purpose of parking automobiles or other vehicles, and the use of said meters, devices or instruments in conjunction therewith, including the establishment and designation of zones or areas where said meters, devices or instruments are to be used.

History: En. Sec. 1, Ch. 91, L. 1949.

Title of Act

An act providing for the use of parking meters by incorporated cities and towns of twenty-five hundred (2500) population or less, and providing for the submission of the question to qualified electors.

Cross-Reference

Parking meter revenues used for off-street parking facilities, sec. 11-3712.

Automobiles⇦5(3).
60 C.J.S. Motor Vehicles § 28.
Governmental immunity as affecting tort liability for alleged nuisance by installation or operation of parking meters. 33 ALR 2d 764.

11-1016. Referendum on parking meters required before ordinance. Provided, however, that no ordinance or ordinances providing for the purchasing, renting, leasing or otherwise acquiring or installing, maintaining, operating or using such parking meters, devices or instruments shall be enacted until and unless the question of whether or not such ordinance or ordinances shall be enacted has been submitted to the qualified electors of such city or town at a general election or special election called for that purpose, and unless at such election a majority of the votes cast for and against the question shall have been in favor of the enacting of said ordinance or ordinances.

History: En. Sec. 2, Ch. 91, L. 1949.

Municipal Corporations⇦108.6.
62 C.J.S. Municipal Corporations § 454.

11-1017. Existing meters and ordinances unaffected. Nothing herein contained shall affect the validity of any ordinance relating to parking meters or similar devices or instruments heretofore adopted by any city or town, or any extension thereof hereafter made.

History: En. Sec. 3, Ch. 91, L. 1949.

Repealing Clause

Section 4 of Ch. 91, L. 1949 repealed all acts and parts of acts in conflict therewith.

Automobiles⇦5(3).
60 C.J.S. Motor Vehicles § 28.

11-1018. Acquisition, construction and maintenance of parking areas—bond issues. A city or town council shall have power to acquire by lease, gift, purchase or condemnation lots or lands for use as parking areas for motor vehicles, and to construct and maintain thereon or on any premises

owned or under lease by such city or town suitable parking facilities for the use of the public and for general traffic control, and to make charges for the use of such facilities; and for the payment of such lots or lands and facilities to issue bonds or other securities payable in whole or in part from the revenues of any such parking lots or areas or parking facilities or from other sources, and to pledge, place a charge upon, or otherwise make available as additional security for the payment of such bonds or securities, any or all revenues from any or all street parking meters owned or to be owned and controlled by said city or town.

History: En. Sec. 1, Ch. 96, L. 1951.

Title of Act

An act empowering a city or town council to acquire lots or lands by lease, gift, purchase or condemnation for use as parking areas for motor vehicles, and to construct and maintain suitable parking facilities for the use of the public and for general traffic control, and to make charges for the use of such facilities, and to provide for the payment of such facilities, and authorizing the pledging of all revenues from said facilities and from street parking meters of such city or town as security for bonds or other securities issued in payment for such facilities, and repealing all acts or parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 96, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 96, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Cross-Reference

Off-street parking facilities, secs. 11-3701 to 11-3725.

Municipal Corporations⇐861.
64 C.J.S. Municipal Corporations § 1845.

11-1019. Operation of bus lines—contracting indebtedness. Whenever a city or town is not being served by a bus company or operator, operating on a regular schedule, and under the jurisdiction of the Montana railroad and public service commission or if such service is to be or is likely to be discontinued in the immediate future, the city or town council of any incorporated city or town shall have the power to contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation or leasing of motor buses and bus lines for the transportation of passengers within the corporate limits of such cities and towns, and to operate the same to any point or points beyond said limits not to exceed eight (8) miles, measured along the route of said bus line; provided that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness must not at any time exceed five per centum (5%) of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes, and provided further, that no money must be borrowed or bonds issued for the purposes herein specified until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Title of Act

An act to enable incorporated cities and towns to acquire, operate, and lease motor busses and bus lines for the transportation of passengers; providing for borrowing money or issuing bonds for the purchase of the same; providing for a vote of the taxpayers; repealing all acts and parts of acts in conflict herewith.

Amendments

The 1955 amendment made no change in this section.

The 1957 amendment inserted the words "or is likely to be" and substituted "five per centum (5%)" for "three per centum (3%)."

Municipal Corporations⚖861.
64 C.J.S. Municipal Corporations § 1845.

11-1020. Operation subject to Motor Carrier Act—exception. The said city or town council or commission shall have authority to provide for the management and operation of said system; and to do all the things necessary for the successful operation of said transportation system. Such operations shall be subject to all the provisions of the Motor Carrier Act (sections 8-101 to 8-129, Revised Codes of Montana, 1947) except that such municipality may be issued a certificate of public convenience and necessity without proof of the existence of public convenience and necessity, and except that the municipality shall be exempt from the payment of fees provided by sections 8-116 and 8-127, Revised Codes of Montana, 1947.

History: En. Sec. 2, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Compiler's Note

Chapter 211 of Laws 1955 did not contain a section 2. Section 1 of chapter 211 amended both section 11-1019 and section 11-1020. Sections 3 and 4 of chapter 211 are compiled as 11-1021 and 11-1022.

Amendments

The 1955 amendment inserted the words "or commission" after the word "council."

The 1957 amendment made no change in this section.

Repealing Clause

Section 3 of Ch. 101, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 101, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Separability Clause

Section 5 of Ch. 101, Laws 1951 read: "If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional."

Municipal Corporations⚖861.
64 C.J.S. Municipal Corporations § 1845.

11-1021. Contracts or lease arrangements with independent carriers of passengers—when authorized—levy of tax. Whenever a city or town is not being served by a bus company or operator, operating on a regular schedule, and under the jurisdiction of the Montana railroad and public service commission or if such service is to be, or is likely to be, discontinued in the immediate future, the city or town council of any incorporated city or town shall have the power to enter into a contract or contracts, or to enter into a lease or a lease and operating agreement, with an independent carrier or independent carriers for the transportation of passengers by bus within the corporate limits of such city or town and to and from any point or points beyond said limits not to exceed eight (8) miles measured along the route of said bus line or lines; and for the purpose of raising the necessary moneys to defray the cost of such transportation service pursuant to such contract or contracts, lease or lease and operating agreement, with such independent carrier or carriers the city or town council shall have power to annually levy a tax on the taxable value of all taxable property within the limits of such city or town; provided, however, that whenever the council of such city or town shall deem it necessary to raise money by taxation for such purpose in excess of the

levy now allowed by law the council of such city or town shall in the manner prescribed by law, submit the question of such additional levy to the legal voters of such city or town who are taxpaying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or town; provided, however, that such additional levy in excess of the levy now allowed by law shall not exceed one and one-half (1½) mills.

History: En. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Amendment

The 1957 amendment inserted the words "or is likely to be," "or to enter into a lease or a lease and operating agreement," "lease or lease and operating agreement" and substituted "one and one-half (1½) mills" for "three-fourths (¾) of one(1) mill."

11-1022. Bids for service—operation of carriers. The said city or town council shall have power and authority to call for bids from independent carriers for such transportation service, and to do all things necessary or proper for establishment and maintenance of such transportation service by contract, lease or lease and operating agreement.

History: En. Sec. 4, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957.

Amendment

The 1957 amendment added the words "lease or lease and operating agreement" and deleted a sentence which read "The operations of such carrier or carriers in furnishing such transportation service under such contract or contracts shall be subject to all the provisions of the Motor Carrier Act (sections 8-101 to 8-129, Revised Codes of Montana, 1947)."

Repealing Clauses

Section 5 of Ch. 211, Laws 1955 and Sec. 3 of Ch. 120, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Separability Clauses

Section 6 of Ch. 211, Laws 1955 and Sec. 2 of Ch. 120, Laws 1957 read "If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional."

11-1023. Contracting with highway commission and/or federal agencies regarding construction or reconstruction of highways, streets, and roads. The city council, commission or other governing body of any city or town may, whenever highway construction work is to be financed in whole or in part by federal funds, enter into and contract jointly or independently with the Montana state highway commission, United States bureau of public roads, and/or any other federal agency heretofore established or which may be hereafter established, for the construction or reconstruction of highways, roads and streets, to acquire rights of way, and do any other thing essential and practical in securing such highway, road and street construction or reconstruction or such rights of way as may be agreed upon between such city council, commission or other governing body and the state highway commission or federal agency. All contracts for work on highways, roads and streets which shall be let pursuant to the authority herein granted, shall be let by the Montana state highway commission.

History: En. Sec. 1, Ch. 69, L. 1957.

Title of Act

An act relating to the powers and duties of city councils, commissions or other governing body of any city or town respecting highways, roads and streets and providing that city councils, commissions or other governing body may enter into and contract jointly or independently with the Montana state highway commission, United States bureau of public roads or any other

federal agency for the construction or reconstruction and to acquire rights of way, for highways, roads and streets within such city or town by such method or methods as may be agreed upon by the state highway commission and such city council, commission or other governing body and requiring that all contracts let pursuant to this act be let by the state highway commission, and repealing all acts and parts of acts in conflict herewith; providing for an effective date.

Repealing Clause

Section 2 of Ch. 69, Laws 1957 repealed all other acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 69, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 2, 1957.

11-1024. Group insurance for county, city, and town officers and employees—authority—approval of employees—limit on contribution of governmental unit. All counties, cities, and towns are hereby authorized upon approval by a two-thirds (2/3) vote of the officers and employees to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees, and their dependents, and the respective governing bodies are authorized to pay as part of the officers and employees salary one-half of the total premium therefor; provided, however, that such payment shall not exceed five dollars ($5.00) per month for each officer and employee.

History: En. Sec. 1, Ch. 174, L. 1957.

Title of Act

An act authorizing counties, cities and towns to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of officers and employees and their dependents; limiting the county, city or town contribution to five dollars ($5.00) per month for each officer and employee and their dependents; repealing all acts and parts of acts in conflict herewith, and providing an effective date.

Repealing Clause

Section 2 of Ch. 174, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 174, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

Section 11-1104. Initiative in cities—petition.

11-1104. (5058) **Initiative in cities—petition.** (1) Ordinances may be proposed by the legal voters of any city or town in this state, in the manner provided in this act. Eight per cent [8%] of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council, or an ordinance amending or repealing any prior ordinance or ordinances. Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at its first meeting next following the filing of the petition. The council may, within sixty [60] days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments, or modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act.

(2) If the council shall have made any change in the proposed ordinance, a suit may be brought in the district court in and for the county in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel on the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side, and the time to be allowed for argument. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different from that proposed in the petition; and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differ materially from that proposed. The petition and the ordinance proposed thereby, and the ordinance actually passed, may be set out in the complaint, or copies thereof annexed to the complaint. The names to the petition need not be set out. Such cases shall be advanced and brought to hearing as speedily as possible, and have precedence over other cases, except criminal and taxation cases.

(3) The court shall have jurisdiction in such cases to determine whether or not the change made by the city council is material, and also whether the petition was regular in form or substance, and shall also have power to decide, if the fact be put in issue by the defendant, whether or not the petition was signed by a sufficient number of voters and was regular in form. If the court shall decide that the change was material and that the petition was regular in form and signed by a sufficient number of legal voters, then the ordinance proposed by the petition shall be submitted to the people as provided in this act. If the court shall decide that the ordinance passed by the council was not materially different from that proposed in the petition, or the petition was not regular in form, or not signed by a sufficient number of legal voters, the ordinance shall not be submitted to the people. If the court shall decide that the changes made by the council were material, but that the petition was irregular for some reason, or not properly or sufficiently signed, a new petition, regular in form, may be presented by the required number of legal voters, asking the council to submit such ordinance to the people, and thereupon the same shall be so submitted as provided in this act.

(4) If the council shall not, within sixty [60] days, pass an ordinance on the subject of the ordinance proposed in the petition, then the ordinance proposed by the petition shall be submitted to the people. Before submitting such ordinance to the people, the mayor or city or town council may direct that a suit be brought in the district court in and for the county, in the name of the city or town, to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The complaint shall name as defendants not less than ten [10] nor more than twenty [20] of the petitioners. In addition to the names of such defendants, in the caption of the complaint, there shall be added the words, "and all petitioners whose names appear on the petition for an ordinance filed on the ..... day of .....,

in the year .....," stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition thereto shall be published at least once, at the expense of the city, in at least one newspaper published in the city or town.

(5) In all suits brought under this section the decision of the district court shall be final except in cases where it shall decide that the proposed ordinance would be unconstitutional or invalid as being beyond the powers of the city or town council, and in such excepted cases the petitioners, or any of them, may appeal to the Supreme Court as in other cases, but shall not be required to give any bond for costs. The decision of the district court holding such ordinance valid or constitutional shall not, however, prevent the question being raised subsequently, if the ordinance shall be passed and go into effect, by anyone affected by the ordinance. No costs shall be allowed to either side in suits or appeals under this section.

(6) If an ordinance shall be repealed pursuant to a proposal initiated by the legal voters of a city or town, as in this section provided, the city or town council may not, within a period of two [2] years thereafter, re-enact such ordinance or any ordinance so similar thereto as not to be materially different therefrom. If during such two-year period the council shall enact an ordinance similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether such new ordinance be a re-enactment without material change of the one so repealed, and the provisions of sub-sections 2 and 3 hereof shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of an ordinance repealed pursuant to initiative of the voters.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R. C. M. 1921; amd. Sec. 1, Ch. 24, L. 1951.

Amendment

The 1951 amendment added paragraph (6).

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, in time therefor. 27 ALR 2d 604.

Power of legislative body to amend, repeal or abrogate initiative or referendum measure, or enact measure defeated on referendum. 33 ALR 2d 1118.

Conclusiveness of declaration in ordinance of an emergency. 35 ALR 2d 586.

CHAPTER 12—CONTRACTS AND FRANCHISES

Section 11-1202. Awarding contracts—advertisement—limitations—installments—sales of supplies—purchases from government agencies—exemptions.

11-1202. (5070) **Awarding contracts — advertisement—limitations—installments—sales of supplies—purchases from government agencies—exemptions.** All contracts for work, or for supplies, or for material, for which must be paid a sum exceeding one thousand dollars ($1,000.00), must be let to the lowest responsible bidder after advertisement for bids: provided that no contract shall be let extending over a period of three (3) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a news-

paper shall be made twice, the first publication to be made not more than twenty-two (22) days nor less than fifteen (15) days before the consideration of bids and the second publication shall be made not less than five (5) days nor more than ten (10) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths (¾) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded as [at] length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed one thousand dollars ($1,000.00) the council may provide for the payment of such amount in installments extending over a period of not more than three (3) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third (1/3) thereof shall be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; re-en. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949.

Compiler's Note

The bracketed word "at" was added by the compiler.

Amendment

The 1949 amendment omitted a pro-

vision reading "otherwise in a weekly newspaper published therein, if there be such" from the second sentence and added the second to fifth paragraphs.

Repealing Clause

Section 2 of Ch. 139, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 139, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

References

Cited or applied in Marchi v. Brackman, — M —, 299 P 2d 761, 766.

11-1207. (5075) **Grant of franchise must be submitted, etc.**

Operation and Effect

The word "franchise" in this section is used in the same sense as it is in Art. XII, secs. 16 and 17 of the state constitution, where it is classed as property and subject to taxation as such. Glodt v. Missoula, 121 M 178, 190 P 2d 545, 548.

Parking Meters

The purchase of parking meters under a conditional sales contract whereby the city determines the location, controls the use and operation and collects the revenues, the vendor to be paid from a percentage of the revenues, and after the total price is paid the meters to become the property of the city, did not constitute the granting of a franchise. Glodt v. Missoula, 121 M 178, 190 P 2d 545, 548.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS—CITY WARRANTS

Section 11-1301. Presentation of claims—limitation of actions.

11-1301. (5078) **Presentation of claims—limitation of actions.** All accounts and demands against a city or town must be presented to the council duly itemized. All claims against a city or town shall contain the following statement: "I certify that this claim is correct and just in all respects, and that payment or credit has not been received." Claims need not be accompanied by affidavit by the party or his agent. These claims must be presented with all necessary and proper vouchers, within one (1) year from the date the same accrued; and any claim or demand not so presented within the time aforesaid is forever barred, and the council has no authority to allow any account or demand not so presented, nor must any action be maintained against the city or town for or on account of any demand or claim against the same, until such demand or claim has first been presented to the council for action thereon; provided, however, that in case the total indebtedness of a city or town has reached three per centum (3%) of the total assessed valuation of the taxable property of such city or town, as ascertained by the last assessment for state and county taxes, it shall be lawful for, and such city or town is hereby authorized and empowered, to conduct its affairs and business on a cash basis as provided and contemplated by the next section of this code.

History: En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1957.

Amendment

The 1957 amendment substituted the second and third sentences and the first five words of the fourth sentence for former material which read "and accompanied by an affidavit by the party or his agent, stating the same to be a true and correct account against the city or town for the full amount for which the same is presented, and that the same accrued as set forth, and."

Repealing Clause

Section 3 of Ch. 55, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 55, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 27, 1957.

11-1305. (5080) Defective highways and public works.

Notice Unnecessary When City Has Knowledge

A "defect" or "obstruction" of which actual notice is required by this section applies only to such as arise and are created without notice, knowledge or permission of the city. Ledbetter v. Great Falls, 123 M 270, 213 P 2d 246, 13 ALR 2d 903.

Where plumber obtained license from city for the excavation and installation of a service pipe from street to residence, the city had notice of such excavation at the time of granting such permission, and further notice to city of existence of such excavation was unnecessary to charge city with liability for damage resulting from unguarded excavation. Ledbetter v. Great Falls, 123 M 270, 213 P 2d 246, 13 ALR 2d 903.

Persons upon whom notice of injury or claim against municipal corporation may or must be served. 23 ALR 2d 969.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 ALR 2d 725.

CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

Section 11-1408. Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget.

11-1408. (5083.7) Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget. (1) The estimates of expenditures, itemized and classified as required in section 11-1404, and as finally fixed and adopted by said council, shall constitute the appropriations for the municipality for the fiscal year intended to be covered thereby, and the council and every other municipal official, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively; provided that upon a resolution adopted by the council at a regular or special meeting, and entered upon its minutes, transfers or revisions within the general class of "salaries and wages" and of "maintenance and support" may be made, provided, that no salary shall be increased above the amount appropriated therefor. Transfers between the general classes provided in section 11-1404 shall not be permitted, provided and except that in the case of appropriations to be expended from municipal road or bridge funds, any transfer between or among the general classes of (1) salaries and wages, (2) maintenance and support, and (3) capital outlay, may be made.

(2) Moneys received from borrowings shall be used for no other purpose than that for which borrowed, except that if any surplus remain after the accomplishment of the purpose for which borrowed it shall be used to redeem the municipal debt. Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available, and where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved. The authorization of a bond issue by the electors, or by the gov-

erning body of the city where an election is not required, shall constitute an appropriation of the bond proceeds to the purpose for which the bonds are authorized, whether or not such purpose is included in a budget previously adopted, but no warrants shall be drawn, expenditures made or obligations incurred in excess of such appropriation, except pursuant to an additional appropriation included in a budget regularly adopted.

(3) Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The council shall not approve any claim, and the clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any municipal officer or officers approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the city fourfold the amount of such claim or warrant, which shall be recovered in an action against such officer or officers, or all of them, and their several sureties on their official bonds, and it shall be the duty of the city attorney to bring an action therefor in the name of the municipal corporation.

History: En. Sec. 7, Ch. 121, L. 1931; amd. Sec. 1, Ch. 95, L. 1957.

Amendment

The 1957 amendment added the third sentence to subd. (2).

Effective Date

Section 2 of Ch. 95, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 4, 1957.

CHAPTER 15—JUDGMENTS—RESPONSIBILITY FOR DAMAGES BY RIOTS

11-1503. (5086) **Cities and towns responsible for damages by mobs, etc.**

References

Cited in Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

Section 11-1801. Police department.
11-1806. Presentation and trial of charges against policemen.
11-1815. Salary of chief of police.
11-1821. Payment of police reserves.
11-1823. Fund for payment of officers on reserve lists—tax levy.
11-1825. Salary deduction for payment of reserve officers.
11-1831. Days off duty without loss of compensation.
11-1832. Minimum wage of police in first and second class cities.

11-1801. (5095) **Police department.** There shall be in every city and town of this state a police department which shall be organized, managed and controlled as in this act provided, said act (being section 5095 to section 5108.17 [11-1801 to 11-1833], Revised Codes of Montana, 1935, as amended), shall in all respects be applicable to and shall govern and control police de-

partments in every such city or town organized under any form of municipal government save and except where this act is in conflict with the commission form of government, provided for in chapter 407 [11-3101 to 11-3137] of the Revised Codes of Montana, 1935, and amendments thereto; and where the provisions of this act do conflict with the provisions of said chapter and the amendments thereto pertaining to the commission form of government, then the provisions pertaining to the commission form of government shall prevail.

History: En. Sec. 1, Ch. 136, L. 1907; re-en. Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949.

Amendment

The 1949 amendment substituted all that part of this section beginning with the words "save and except where this act * * *" for "now existing or hereafter provided for, the provisions of any law to the contrary notwithstanding."

Effective Date

Section 2 of Ch. 72, L. 1949 provided the act should be in effect from and after May 2, 1949.

11-1806. (5100) **Presentation and trial of charges against policemen.** (1) The police commission shall have the jurisdiction, and it shall be its duty to hear, try and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer is incompetent, or by age or disease, or otherwise, has become incapacitated to discharge the duties of his office, or has been guilty of neglect of duty, or of misconduct in his office, or of conduct unbecoming a police officer or has been found guilty of any crime, or whose conduct has been such as to bring reproach upon the police force.

(2) Any charge brought against any member of the police force must be in writing in the form required by the police commission and a copy thereof must be served upon the accused officer or member at least fifteen (15) days before the time fixed for the hearing of such charge.

(3) It is the duty of the police commission at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try and determine the charge according to the rules of evidence applicable to courts of record in the state of Montana. The accused shall have the right to be present at the trial in person and by counsel, and to be heard, and to give and furnish evidence in his defense. All trials shall be open to the public.

(4) The chairman, or acting chairman, of the police commission, shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing and any person duly served with a subpoena is bound to attend in obedience thereto, and the police commission shall have the same authority to enforce obedience to the subpoena, and to punish the disobedience thereof, as is possessed by a judge of the district court in like cases, provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

(5) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven, and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove or discharge any officer who shall have been found guilty of the charge filed against him.

(6) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing, giving reasons there-

for, which shall become a permanent record of the police commission, provided, however, that where and when the police commission decides the charge not proven the decision is not subject to modification or veto by the mayor nor subject to any review but is final and conclusive.

Where the police commission decides the charge proven, the mayor, within five (5) days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.

(7) When a charge against a member of the police force is found proven by the board, and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board, or if modified by the mayor, then such decision as modified, and such decision or order shall be subject to review by the district court of the proper county on all questions of fact and all questions of law.

(8) The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of sixty (60) days after the decision of the police commission or order of the mayor has been filed with the city clerk.

(9) In no case shall any officer or member of the police force, be discharged without a hearing or trial before the police commission, as herein provided, in all cities of the first class, cities of the second class, any and all cities having a duly and regularly appointed, qualified and acting police commission, and all cities and municipalities functioning under the commission form, city manager plan or under a mayor.

(10) The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any officer, for a period of not exceeding ten (10) days in any one (1) month, without any hearing or trial, such suspension to be with or without pay as the order of suspension may determine. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two (2) persons at one time for a period not to exceed thirty (30) days to do police duty who are not members of the police department.

(11) That wherever the word "mayor" is used in this act, it is intended to include "city manager," "city commissioner" or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; re-en. Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1923; amd. Sec. 1, Ch. 72, L. 1955.

Amendment

The 1955 amendment in subd. (2) substituted "fifteen (15) days" for "three (3) days"; in subd. (3) substituted the words "evidence applicable to courts of record in the state of Montana" for "said police commission"; in subd. (4) added the proviso clause; in subd. (6) added the proviso clause and substituted the present second paragraph for one which formerly read: "The findings and decisions of the police commission shall be final and conclusive unless modified or vetoed by the mayor, within five days from the date of the filing of such findings and decision with the city clerk"; in subd. (7) substituted the words "shall be subject to review by the district court of the proper county on all questions of fact and all questions of law" for the words "shall not be subject to review by any court on a question of fact"; subd. (8) completely rewritten; in subd. (9) added all that part of the sub-

division beginning with the words "cities of the second class, * * *" and added a new subdivision numbered "(11)."

Repealing Clause

Section 2 of Ch. 72, Laws 1955 repealed all acts or parts of acts in conflict therewith.

11-1815. (5107) **Salary of chief of police.** That from and after July 1, 1957, the salary of the chief of police in cities of the first class shall not be less than four hundred fifty dollars ($450.00) per month for the first year of service, and thereafter of at least four hundred fifty dollars ($450.00) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 13, Ch. 136, L. 1907; re-en. Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957.

Amendments

The 1951 amendment changed the salary provision from "not less than one hundred nor more than three hundred dollars per month" to a fixed maximum of $500.

The 1957 amendment made substantial changes in this section. Before this amendment it read "The salary of the chief of police in cities of the first class shall not exceed five hundred dollars per month, and subject to such maximum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council."

Repealing Clauses

Section 2 of Ch. 9, Laws 1951 and Sec. 2 of Ch. 29, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Salary of chief of police in second and third class cities, sec. 11-730.

11-1821. (5108.5) **Payment of police reserves.** (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half (½) the salary he was receiving during the year prior to the time he passed to the police reserve list.

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves' fund, a sum equal to one-half (½) the salary such policeman or officer was receiving during the year prior to the date of his demise or prior to the date such policeman or officer passes to the police reserve list. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen (15) years younger than her husband, unless she shall have been married to and living with her husband for ten (10) years immediately preceding his death. If such policeman or officer shall leave a dependent minor child, or dependent minor children, then upon the death of such policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, or if his widow be fifteen (15) years younger than her husband and shall not have been married to and living with her husband for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one dependent minor child, shall be paid the same monthly payments as

are herein provided to be paid to the surviving widow, until such minor child, or minor children, shall have attained the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the surviving widow and/or children shall not be made if such payments will require an increase in the millage tax levy now provided for by section 11-1823.

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of such child or children, for the use of such minor, until such minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one minor child, upon each such child reaching the age of eighteen (18) years the pro rata payments to such child shall cease and shall be made to the remaining minor child or children until the youngest child shall reach the age of eighteen (18) years or shall have married.

(4) The term "policeman," or "police officer," as herein used shall include all those on the reserve list, as well as "active police," "police officer," and/or "patrolman."

History: En. Sec. 5, Ch. 100, L. 1927; amd. Sec. 5, Ch. 120, L. 1929; amd. Sec. 1, Ch. 15, L. 1939; amd. Sec. 1, Ch. 69, L. 1951; amd. Sec. 1, Ch. 45, L. 1953; amd. Sec. 1, Ch. 176, L. 1955.

Amendments

The 1951 amendment in subdivision (2) inserted the word "reasonable" before the words "monthly payments," substituted the words "a sum equal to one-half (½) the salary such policeman or officer was receiving during the year prior to the time such policeman or officer passed to the police reserve list" for "the sum of fifty dollars ($50.00) a month," inserted the words "or if his widow be fifteen (15) years younger than her husband and shall not have been married to and living with her husband for the ten (10) years immediately preceding his death, then" in the last sentence of such subdivision and raised the specified age from 16 to 18 years, and in subdivision (3) raised the specified age in each instance from 16 to 18 years.

The 1953 amendment in the first sentence of subdivision (2) provided that the amount payable to a surviving widow be a sum equal to one-half the salary such policeman was receiving during the year prior to going on the reserve list; it formerly provided that she "be paid, from the police reserve fund, reasonable monthly payments in such amount as the trustee of the said fund shall deem proper, but in no event exceeding a sum equal to one-half the salary."

The 1955 amendment in the first sentence of subd. (2) inserted the words "on the active list or reserve list" and substituted the words "date of his demise or prior to the date" for the word "time."

Repealing Clause

Section 2 of Ch. 69, Laws 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 45, Laws 1953 provided the act should be in effect from and after the first day of July, 1953.

Municipal Corporations⇐187.

62 C.J.S. Municipal Corporations § 588.

Retroactive application of fireman's or policeman's pension statutes. 27 ALR 2d 978.

11-1823. (5108.7) **Fund for payment of officers on reserve lists—tax levy.** For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund

created for the payment of such salaries of police officers upon the reserve list.

However, in case the demand against such fund shall be heavier than said levy can provide, then and in such case such additional levy of not to exceed one (1) mill may be made until such returns from the first mill levy be sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949.

Amendment

The 1949 amendment added the last paragraph.

Repealing Clause

Section 2 of Ch. 78, L. 1949 repealed all acts and parts of acts in conflict therewith.

Municipal Corporations⇐187.
62 C.J.S. Municipal Corporations § 588.

11-1825. (5108.9) **Salary deduction for payment of reserve officers.** The treasurer of any incorporated city which may be hereafter subject to the provisions of this act, shall retain from the monthly salary of all police officers upon the active list, a sum equal to three per centum (3%) of the monthly compensation paid each officer for his services as such police officer, the said monthly deduction from the salaries of such police officers, shall be paid into the fund created by the tax levy for the purpose of paying the salaries of police officers upon the reserve list.

History: En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953.

Amendment

The 1953 amendment raised the amount to be retained from the monthly salary of all police officers from 1½% to 3%.

Repealing Clause

Section 2 of Ch. 54, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 54, Laws 1953 provided the act should be in effect from and after the first day of July, 1953.

Municipal Corporations⇐187.
62 C.J.S. Municipal Corporations § 588.

11-1831. (5108.15) **Days off duty without loss of compensation.** That each member of the police force in every city of the first and second class shall be given two (2) days off duty in each seven (7) day period without loss of compensation.

History: En. Sec. 1, Ch. 53, L. 1931; amd. Sec. 1, Ch. 65, L. 1957.

Amendment

The 1957 amendment substituted "two (2) days" off duty in each "seven (7)" day period for "one (1) day" off duty in each "eight (8)" day period.

Repealing Clause

Section 2 of Ch. 65, Laws 1957 repealed all acts and parts of acts in conflict therewith.

11-1832. (5108.16) **Minimum wage of police in first and second class cities.** That from and after July 1, 1957, there shall be paid to each duly confirmed member of the police department of cities of the first and second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours' work, of at least three hundred and fifty dollars ($350.00) minimum per month for the first year of service, and thereafter of at least three hundred and fifty dollars ($350.00) minimum per month plus one per cent (1%) of said minimum base monthly salary three hundred and fifty dollars ($350.00) for each additional year service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957.

Amendments

The 1951 amendment substituted "July 1, 1951" for "the passage and approval of this act," inserted the words "duly confirmed" preceding the word "member" and raised the monthly minimum salaries from $200 to $280.

The 1957 amendment substituted "July 1, 1957" for "July 1, 1951," "three hundred and fifty dollars ($350.00) minimum" for "two hundred eighty dollars ($280.00)" the first time it appears, "three hundred and fifty dollars ($350.00) minimum per month plus one per cent (1%) of said minimum base monthly salary three hundred and fifty dollars ($350.00)" for "two hundred eighty dollars ($280.00) per month plus one ($1.00) dollar per month" and "twentieth" for "tenth."

Repealing Clauses

Section 2 of Ch. 47, Laws 1951 and Sec. 2 of Ch. 28, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

Section 11-1901. Council to establish fire department.
11-1905. Qualification of firemen.
11-1912. Tax levy for fund.
11-1918. Reports of insurance companies.
11-1923. Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.
11-1925. Pensions to retired firemen.
11-1932. Minimum wages of firemen in cities of first and second class.
11-1941. Limitation on liability of persons authorized to receive and transmit fire reports for delays.

11-1901. (5109) **Council to establish fire department.** There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this act provided, said act (being sections 5109 to 5140, Revised Codes of Montana, 1935, as amended, and the provisions of chapter 15 of the laws of the twenty-fifth legislative assembly, 1937, and all of the provisions of chapter 136 of the laws of the twenty-sixth legislative assembly, 1939 [11-1901 to 11-1940]) shall in all respects be applicable to and shall govern and control fire departments in every such city or town organized under whatever form of municipal government save and except where this act is in conflict with the commission form of government, provided for in chapter 407 [11-3101 to 11-3137] of the Revised Codes of Montana, 1935, and amendments thereto; and where the provisions of this act do conflict with the provisions of said chapter and the amendments thereto pertaining to the commission form of government, then the provisions pertaining to the commission form of government shall prevail.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949.

Compiler's Note

The title and the enacting part of the 1949 amendatory act omitted any reference to the amendment by Ch. 97, Laws of 1947.

Amendment

The 1949 amendment substituted all that part of this section beginning with the words "save and except where this act * * *" for "now existing or hereafter provided for or whichever said city or town shall adopt, the provisions of any law to the contrary notwithstanding," and omitted the last paragraph which read "The council of cities and towns shall have charge of and supervision over the fire department thereof, with power to regulate its duties, to maintain a fire alarm telegraph, to erect engine, hose and hook-and-ladder houses, and provide engines and other implements and apparatus for the extinguishing of fire, and make such

other ordinances not inconsistent with the provisions of this act and the other laws of the state for the government, direction and management of the fire department."

Effective Date

Section 2 of Ch. 73, L. 1949 provided the act should be in effect from and after May 2, 1949.

11-1905. (5113) **Qualification of firemen.** The qualifications of firemen shall be that they shall be qualified voters of the city or town, not, at the time of original appointment, over thirty-one (31) years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1955.

Amendment

The 1955 amendment substituted the words "not, at the time of original appointment, over thirty-one (31) years of age," for the words "not over forty-five years of age," and deleted a sentence which read "Should there be any firemen in the existing fire department of cities and towns, whose age at the time of their appointment is forty-five years or over, the same shall be retired from the service of such department."

11-1912. (5119) **Tax levy for fund.** For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to one per centum (1%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as herein below set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. Whenever the total amount of a fire department relief association's fund is greater than one-half of one per centum (½ of 1%) and less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be one (1) mill on each dollar of taxable valuation of all property assessed for taxes within the limits of the said city, town or municipality; provided, however, if the assessment of a one (1) mill tax levy in any one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise, the mill tax levy shall be such fractional part of one (1) mill as will produce a sufficient amount of revenue as will bring the total amount of the said fire department relief association's dis-

ability and pension fund to an amount equal to one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality.

2. Whenever the total amount of a fire department relief association's fund is less than one-half of one per centum (½ of 1%) of the taxable valuation of all taxable property within the said city, town or municipality, the special tax levy shall be two (2) mills on each dollar of taxable valuation of all taxable property assessed for taxes within said city, town or municipality; provided, however, that if the assessment of a two (2) mill tax levy in any one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one-half of one per centum (½ of 1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise, the tax levy shall be one (1) mill, as provided in the last preceding paragraph, and such fractional part of one (1) mill as will produce a sufficient revenue as will cause the fire department relief association's disability and pension fund to equal one-half of one per centum (½ of 1%) of the taxable valuation of all taxable property in said city, town or municipality.

3. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of all taxable property within the city limits of the city, town or municipality, the city council may levy an annual special tax not to exceed two (2) mills on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality.

History: En. Sec. 3, Ch. 71, L. 1907; re-en. Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949.

Amendment

The 1949 amendment inserted the words "within such city, town or municipality" following "under special or local laws passed by the legislative assembly and adopted by the electors," substituted the words "as herein below set forth" following "levy a special tax" for the words "of not to exceed one (1) mill on the dollar upon the taxable valuation of all taxable property assessed for taxes within the limits of said city, town or municipality," substituted the numbered paragraphs 1 and 2 for provisions that if the levy for one year does not bring the fund to the one per cent of taxable valuation successive annual levies of one mill could be made and if in any year the one mill levy would cause the fund to exceed one per cent of the taxable valuation the levy should be the percentage of one mill necessary to bring the fund to the required percentage. The 1949 amendment also made minor changes in wording.

Repealing Clause

Section 2 of Ch. 183, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 183, L. 1949 provided the act should be in effect from and after July 1, 1949.

11-1918. (5126) **Reports of insurance companies.** The commissioner of insurance shall furnish to each insurance company authorized to effect insurance against risks enumerated in paragraph 1 of section 40-1409 for its annual statement, a list of all such incorporated cities or towns, and each company shall report therein the amount of the fire portion of the direct premiums, after deducting cancellations and return premiums, received by it during the preceding year in each incorporated city or town. Before July 1 following the said October 31, mentioned in preceding sections, the commissioner of insurance shall certify to the state auditor the name of each city or town which has an organized fire department and fire

department relief association which has complied with provisions of section 11-1910, which has been so reported to him and the amount of the fire portion of the direct premiums after deducting cancellations and return premiums, received in each such city or town in such year by each insurance company authorized to effect insurance on risks enumerated in paragraph 1 of section 40-1409.

History: En. Sec. 2, Ch. 129, L. 1911; re-en. Sec. 5126, R. C. M. 1921; amd. Sec. 8, Ch. 58, L. 1927; amd. Sec. 1, Ch. 126, L. 1947; amd. Sec. 1, Ch. 22, L. 1955.

Amendment

The 1955 amendment substituted the word "furnish" for the words "include in the blank form furnished" in the first sentence and substituted the words "the fire portion of the direct premiums, after deducting cancellations and return premiums" for the word "premium" both times it appears.

Repealing Clause

Section 2 of Ch. 22, Laws 1955 repealed all acts and parts of acts in conflict therewith.

11-1923. (5130) **Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.** (1) The secretary and treasurer of every fire department relief association so formed shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes the money has been paid and expended, and file it with the association, and a duplicate with the state auditor. No money shall be paid to the treasurer of such fire department relief association until such report is so filed. No one serving as a substitute or on probation, nor any person who has not been confirmed a member of an organized fire department is eligible for membership in the relief association. No treasurer of any such association shall enter upon his duties until he has given to the association a good and sufficient bond of not less than fifty per cent (50%) of the amount of the cash funds and securities of the association, for the faithful performance of his duties according to law, the amount of such bond to be approved and paid for by such association. Provided, however, that in no case shall such official bond be in excess of the amount of twenty-five thousand dollars ($25,000.00).

(2) Provided further, that upon a majority vote of the members of the association, the city or town treasurer shall be ex officio treasurer of the fire department relief association and the official bond of such city or town treasurer shall cover the faithful discharge of his duties as ex officio treasurer of the fire department relief association, and the cash in the firemen's relief fund shall have the same protection as to depository securities furnished by banks, as the other funds of the city or town. All of the financial books and accounts of such association with reference thereto shall be subject at all times to examination by the state examiner.

(3) The state examiner is hereby authorized, empowered and required to make such examination at least once each year, for which service the association shall pay to the state treasurer on or before the first day of July of each year, in all cases where the fund is in excess of one thousand dollars ($1,000.00) and less than five thousand dollars ($5,000.00), a fee in the amount of ten dollars ($10.00); from five thousand dollars ($5,000.00) to ten thousand dollars ($10,000.00), a fee in the amount of twenty-five dollars ($25.00), and where the fund is ten thousand dollars ($10,000.00)

and over, a fee in the amount of thirty-five dollars ($35.00), which shall be credited to the state general fund. Upon complaint being duly made to him that the money or any part thereof paid under the provisions of this act to the treasurer of such association has been or is being expended for any unauthorized purpose, and if such money upon examination is found to have been expended contrary to the authority given, he shall so report to the governor, upon whose directions to the state auditor, no further warrants shall be issued to such fire department relief association treasurer until the money so expended has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R. C. M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953.

Amendments

The 1949 amendment raised the amount of the fund for which the state examiner is entitled to an examination fee of ten dollars from in excess of $1,000 to in excess of $2,500.

The 1953 amendment divided this section in subdivisions and in subdivision (3) changed the provisions regarding the amount of the fund for which the state examiner is entitled to a fee, and the amount of the fees by classifying the funds according to their value and by providing different fees for the different classifications of funds. Formerly the provision regarding fees read "in excess of two thousand five hundred dollars ($2,500.00) a fee in the amount of ten dollars ($10.00)."

Repealing Clause

Section 2 of Ch. 39, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 39, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 21, 1949.

Municipal Corporations⇨200.
62 C.J.S. Municipal Corporations § 615.

11-1925. (5132) **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund", a "service pension" in an amount which shall be equal to one-half (½) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. Provided, such association may at any time, by a two-thirds (2/3) vote of the members thereof, increase or decrease the said service pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided, that no increase shall be effected as will increase the said "service pension" to an amount in excess of a sum equal to one-half (½) of the monthly active duty compensation last received by the member; provided, further, that no decrease shall be effected unless the balance in the "disability and pension fund" is less than one-half (½) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars ($75.00) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such a fire department, without

qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949.

Amendment

The 1949 amendment inserted the words "as a fully paid member of a" preceding "paid, or partly paid and partly volunteer" and deleted therefrom the words "on the volunteer" and added the last paragraph.

Separability Clause

Section 2 of Ch. 194, L. 1949 read: "If any clause, sentence, section, paragraph, or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid and inoperative."

Repealing Clause

Section 3 of Ch. 194, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 194, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 3, 1949.

Municipal Corporations⇐200.
62 C.J.S. Municipal Corporations § 614.
Retroactive application of fireman's or policeman's pension statutes. 27 ALR 2d 978.

11-1932. Minimum wages of firemen in cities of first and second class. From and after July 1, 1957, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first or second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least three hundred fifty dollars ($350.00) per month for the first year of service, and thereafter of at least three hundred fifty dollars ($350.00) minimum per month plus one per cent (1%) of said minimum base monthly salary three hundred fifty dollars ($350.00) for each additional year of service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957.

Amendments

The 1951 amendment substituted "July 1, 1951" for "July 1, 1947," inserted the words "duly appointed and confirmed" preceding "member" and raised the minimum salary from $200 per month to $280 per month.

The 1957 amendment substituted "July 1, 1957" for "July 1, 1951," raised the minimum salary from $280 per month to $350 per month and substituted "for the first year of service * * *" to end of section for "together with the sum of one dollar ($1.00) per month additional per year for each year not exceeding ten (10) years that such member shall have served on such fire department of such city or town."

Repealing Clauses

Section 2 of Ch. 51, Laws 1951 and Sec. 2 of Ch. 62, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Municipal Corporations⇐199.
62 C.J.S. Municipal Corporations § 612.

11-1941. Limitation on liability of persons authorized to receive and transmit fire reports for delays. No person, corporation, partnership or association which is authorized by any city, town, village or district fire department, or by any volunteer fire company to receive any report of fire or which agrees to receive and transmit such report to such fire department or volunteer fire company shall be liable in any civil action for damage to property or persons, including death, caused by delay in reporting or failure

to report such fire, unless such delay or failure is the result of the gross negligence of such person, corporation, partnership or association.

History: En. Sec. 1, Ch. 42, L. 1955.

Title of Act

An act limiting liability of persons, corporations, partnerships or associations, authorized by any city, town, village or district fire department, or by any volunteer fire company, to receive any report of fire, or which agree to receive and transmit such a report to any city, town, village, or district fire department, or volunteer fire department or volunteer fire company, and providing that such persons, corporations, partnerships or associations shall not be liable for delay in reporting or failure to report such fire unless delay or failure is the result of gross negligence; repealing all acts and parts of acts in conflict herewith and providing for the date of its passage and approval.

Repealing Clause

Section 2 of Ch. 42, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 42, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS

Section 11-2008. Fire protection—creation of fire districts—contracts with cities and towns—dissolution and change of boundaries.
11-2010. Trustees of fire districts—appointment—powers.
11-2022. Disability and other benefits allowed.

11-2008. (5148) **Fire protection—creation of fire districts—contracts with cities and towns—dissolution and change of boundaries.** (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying and maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city or town the consideration provided for in any contract with the council of such city or town for

the extension of fire protection service to property within such district, and such tax must be collected as are other taxes.

(b) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of a area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original district shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the originl district.

(d) Change of boundaries—annexation. Contiguous territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the contiguous area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure out-

lined in subsection (c) above; and shall allow the annexation of such proposed contiguous territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area included within the original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Contiguous territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is contiguous. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area included within both districts affected, and who constitute a majority of the taxpaying freeholders of both districts, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957.

Compiler's Note

Section 2 of Ch. 75, Laws 1953 is compiled as Sec. 11-2010.

Amendments

The 1953 amendment arranged this section in subsections; added subsections (c) and (d); substituted the words "fire protection facilities and apparatus for such districts" for the words "apparatus and maintaining the fire department of any such district" in subsection (a) and deleted from that subsection the provisions which appeared at the end of subsection (a) which read "All moneys so collected by the county treasurer shall be disbursed by him upon warrants signed by the treasurer of the fire company and countersigned by its president or chief officer. In the drawing of such warrants against the funds so collected by the county treasurer, the president or chief officer and treasurer of the fire company shall be governed by the by-laws of such fire company. It is provided that the provisions of this section shall not apply to payment of bonds and interest thereon as provided by sections 11-2010 to 11-2019."

The 1957 amendment made numerous changes and additions to subds. (a) and (b) of this section.

Separability Clause

Section 2 of Ch. 75, Laws 1957 read "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this law."

Repealing Clause

Section 3 of Ch. 75, Laws 1957 repealed all acts and parts of acts in conflict therewith.

11-2010. (5149) Trustees of fire districts—appointment—powers. (a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners shall appoint five qualified trustees to govern and manage the affairs of the

fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable by-laws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town lying within five (5) miles of the farthest limits of the district, for the extension of fire protection service by such city or town to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by such cities or towns lying within the district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953.

Compiler's Note

Section 1 of Ch. 75, Laws 1953 is compiled as Sec. 11-2008.

Amendment

The 1953 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clauses

Section 3 of Ch. 75, Laws 1953 specifically repealed sections 11-2011, 11-2012, 11-2013, 11-2014, 11-2015, 11-2016, 11-2017, 11-2018 and 11-2019.

Section 4 of Ch. 75, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 75, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 25, 1953.

11-2011 to 11-2019. (5150 to 5158) **Repealed.**

Repeal

These sections (Secs. 2 to 10, Ch. 107, L. 1911, as amended Sec. 1, Ch. 130, L. 1925), relating to a bond election and the proceeds thereof for a fire district, were repealed by Sec. 3, Ch. 75, Laws 1953, effective February 25, 1953.

11-2022. (5158.3) **Disability and other benefits allowed.** 1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or nonconfined, in the following amounts:

a. If confined to a hospital, the actual cost of hospitalization, and the reasonable charges of a duly licensed physician or surgeon, not to exceed two thousand five hundred dollars ($2,500.00).

b. If not confined to a hospital, the actual reasonable charges of a duly licensed physician or surgeon, not to exceed seven hundred fifty dollars ($750.00).

c. If confined to his home, and such confinement necessitates the services of a nurse, then the actual charges of such nurse, together with the actual reasonable charges of a duly licensed physician or surgeon, not to exceed one thousand seven hundred fifty dollars ($1,750.00).

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the following amounts: Hand or arm to elbow, two hundred fifty dollars ($250.00); arm above elbow, three hundred dollars ($300.00); foot or leg, two hundred fifty dollars ($250.00); eye, twenty-five dollars ($25.00); teeth, one hundred seventy-five dollars ($175.00). The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the sum of two hundred fifty dollars ($250.00) shall be allowed.

4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of fifty dollars ($50.00) per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

History: En. Sec. 3, Ch. 65, L. 1935; amd. Sec. 1, Ch. 37, L. 1957.

Amendment

The 1957 amendment re-subdivided this section by making all of the 1935 law subd. 1 and added new subds. 2, 3 and 4. In subd. 1 the 1957 amendment inserted the word "area" between the words "unincorporated" and "town"; in subd. 1, a substituted "two thousand five hundred dollars ($2,500.00)" for "two hundred fifty dollars ($250.00)"; in subd. 1, b substituted "seven hundred fifty dollars ($750.00)" for "seventy-five dollars ($75.00)"; in subd. 1, c substituted "a duly licensed" for "attending" and "one thousand seven hundred fifty dollars ($1,750.00)" for "one hundred seventy-five dollars ($175.00)."

Separability Clause

Section 2 of Ch. 37, Laws 1957 read "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this act."

Repealing Clause

Section 4 of Ch. 37, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 37, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 21, 1957.

CHAPTER 21—MUNICIPAL REGULATION OF PLUMBING —PLUMBING LICENSE

(Repealed—Section 12, Chapter 203, Laws of 1949)

11-2101 to 11-2111. (5183 to 5193) Repealed.

Repeal

These sections (Ch. 29, L. 1913), providing for regulation and licensing of plumbers by a municipally appointed board of plumbing examiners, were repealed as Secs. 5183 to 5193, Revised Codes 1935 by Sec. 12, Ch. 203, Laws 1949.

The new law (Ch. 203, L. 1949) provides for regulation and licensing by a state board and it is therefore compiled as secs. 66-2401 to 66-2411.

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

Section 11-2208. Sufficiency of description after resolution of intention.
11-2214. Methods of payments of improvements.
11-2217. Cities and towns may establish sewage treatment and disposal plants and systems and water supply and distribution systems.
11-2218. May issue bonds—sinking fund—rates for service, etc.
11-2219. Rates and charges for services.
11-2220. Income to be kept separately.
11-2220.1. Powers and duties of public service commission unaffected.
11-2282. Cancellation of extinguished liability accounts.
11-2285. Street parking improvement districts—abandonment.
11-2286. City and town council—powers and duties—repair and maintenance —resolutions.
11-2287. Designation of district.

11-2201. (5225) Special improvements—powers of city council.

Street Improvements

Sections 11-2201 to 11-2281 provide the method for carrying out the powers granted in section 11-906. Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708.

Limitation of action on or to compel taxation for improvement bonds. 38 ALR 2d 930.

11-2202. (5226) Special improvement districts—placing wires, etc.

Bond Issues—Payment

Where bonds were issued under section 5226, Revised Codes 1921 (this section) creating a special improvement district only from the special improvement district fund, and although town may have had authority to pay bonds from water fund it could not be compelled to do so. State ex rel. Truax v. Lima, 121 M 152, 193 P 2d 1008, 1010.

11-2205. (5228) Assessment of extended district including lots, etc.

Operation and Effect

Where a district was created for the purpose of paying for improvements at intersections as authorized by this section and another district was created under section 11-2214 to defray the cost of the street where it abuts on privately-owned property there was in no sense double taxation. The assessments were for different purposes. One assessment was to raise money to defray the cost of the intersections and the other to defray the cost of the street where it abuts on privately-owned property. Bidlingmeyer v. City of Deer Lodge, 128 M 292, 274 P 2d 821, 823.

11-2206. (5229) Protests against proposed work.

References

Cited in Adkins v. Livingston, 121 M 528, 194 P 2d 238, 240.

11-2208. (5231) Sufficiency of description after resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, in any and all improve-

ment districts, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for the description and further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1955.

Amendment

The 1955 amendment inserted the words "in any and all improvement districts" and "the description and."

Repealing Clause

Section 2 of Ch. 71, Laws 1955 repealed all acts and parts of acts in conflict therewith.

11-2214. (5238) **Methods of payments of improvements.** (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the two following methods of assessment:

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; provided, however, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

(b) The city council or commission shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of section 11-2205 of this code; and provided, further, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(2) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be and continue to be

the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway either in the operation of its cars or in the laying or repair of its tracks, and in case of a failure or refusal of such owner or operator so to repair such pavement within a reasonable time after notice by the city council or commission, the city council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

(3) Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

(4) It shall be lawful for the owner or owners of the lots or land fronting upon any street, the width and grade of which shall have been established by the city council or commission, to perform, at his or their own expense (after obtaining permission from the council or commission so to do, but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line theerof and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to establish width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed.

(5) Whenever thereafter the city council or commission orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and

all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street, and belonging to any such certified owners or their successors in interest.

(6) Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (excepting grading) on such street, in front of any block, at his or their own expense, and the city council or commission shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the city engineer at the time said order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955.

Amendment

The 1955 amendment inserted the words "or commission" after the word "council" each time they appear in this section and in paragraph (a) of subd. (1) substituted the present last sentence for one which read: "In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement, that a square foot of any inside lot shall bear."

Effective Date

Section 2 of Ch. 39, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

Operation and Effect

Where a district was created for the purpose of paying for improvements at intersections as authorized by section 11-2205 and another district was created to defray the cost of the street under this section there was in no sense double taxation. The assessments were for different purposes. One assessment was to raise money to defray the cost of the intersections and the other to defray the cost of the street where it abuts on privately-owned property. Bidlingmeyer v. City of Deer Lodge, 128 M 292, 274 P 2d 821, 823.

11-2216. (5239) **Sewer systems.**

References

Cited or applied in Crawford v. City of Billings, — M —, 297 P 2d 292, 298.

11-2217. Cities and towns may establish sewage treatment and disposal plants and systems and water supply and distribution systems. Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply

and/or distribution system, or any combinations of such systems, and may operate and maintain such facilities for public use, and in addition to all other powers granted to it, such municipality shall have authority, by ordinance duly adopted by the governing body to charge just and equitable rates, charges or rentals for the services and benefits directly or indirectly furnished thereby. Such rates, charges or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The sewer charges may be fixed on the basis of water consumption or any other equitable basis the governing body may deem appropriate and, if the governing body determines that the sewage treatment and/or storm water disposal prevents pollution of sources of water supply, may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of such facilities and services. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

In this act "qualified electors" shall mean registered electors of the municipality whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality. The question of building, constructing, reconstructing or extending the system, plant or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions. Any election under this act may be called by a resolution of the governing body which it may adopt without being previously petitioned to do so.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955.

Amendment

The 1955 amendment in the first sentence substituted the words "on the question" for the words "at an election held for that purpose" and inserted the words "or a water supply and/or distribution system, or any combination of such systems" between the words "therefrom" and "and"; in the second sentence inserted the words "sewer charges" between the words "and" and "may" and substituted the words "disposal of sewage and storm waters" for "its disposal"; in the third sentence inserted the word "sewer" before "charges", "and/or storm water disposal" between the words "treatment" and "prevents" and added the last sentence of the first paragraph.

11-2218. May issue bonds—sinking fund—rates for service, etc. Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; which bonds shall bear interest at a rate or rates and shall be sold at a price resulting in an average net interest cost, computed to the stated bond maturity dates, of not more than six per cent (6%) per annum and all bonds shall mature within forty (40) years from date of bonds, and

may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds.

At the time of, or before the issuance and sale of any such bonds, the governing body must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside a sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of this section or any other applicable law.

Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with

the issue authorized by the electors for reconstruction, improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors. Said refunding bonds, or any bonds of any such combined issue, may be exchanged at par and accrued interest for all or part of said outstanding bonds, with the consent of the holders thereof, or may be deposited in escrow for the purpose of such exchange with a suitable bank or trust company within or without the state; or proceeds of the sale of the refunding or combined issue may be similarly deposited in escrow and applied to the redemption of all or part of the outstanding bonds at maturity or when the same are next prepayable according to their terms, and to the payment of accrued interest thereon and of any premium payable for redemption prior to maturity, and to the purchase and retirement of any outstanding bonds which can be so purchased at a price less than par plus interest to accrue to maturity or, if prepayable, at a price less than par plus interest to accrue to their earliest possible redemption date plus any premium payable upon redemption prior to maturity; and any revenue bond proceeds so deposited in escrow may be invested in general obligations of the United States pending the use thereof for the purposes herein authorized, and any such investments shall be deposited with the escrow agent for safekeeping. Nothing herein shall, however, be deemed to authorize the refunding of any matured bonds for the payment of which net revenues on hand are sufficient, or to authorize the refunding of any outstanding bonds at a higher rate of interest unless available net revenues are insufficient to pay principal and interest due thereon, or unless the refunding is authorized simultaneously with the issuance of additional bonds for reconstruction, improvements or additions, which, according to the terms of the outstanding bonds, must be junior and subordinate to the lien of such outstanding bonds upon the net revenues.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957.

Amendments

The 1951 amendment inserted the words "and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive" in the first paragraph and added what is now the next to the last paragraph.

The 1955 amendment completely rewrote this section. For section prior to the 1955 amendment see parent volume and the 1951 amendment note.

The 1957 amendment increased the rate of interest from "five per cent (5%) per annum" to "six per cent (6%) per annum" in the first paragraph.

Municipal Corporations⇐911.
64 C.J.S. Municipal Corporations § 1907.

11-2219. Rates and charges for services. The governing body of such municipality shall have full power and authority, and it is hereby made its duty to fix and establish, on the basis of water consumed or any other equitable basis, by ordinance or resolution, and collect rates and charges for the services and facilities afforded by the system.

The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making

of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the governing body, or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in preceding paragraph.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955.

Amendment

The 1955 amendment in the second paragraph substituted the words "of operation and maintenance" for the words "and operation, repair and maintenance" and beginning with the words "accumulation of such reserves * * *" to the end of paragraph for the words "ten per cent (10%) depreciation charges."

11-2220. Income to be kept separately. After any municipality has issued and sold revenue bonds under this act, it must keep all income and revenues derived from the operation of the system separate and distinct from all other revenues and shall keep books and accounts for such system separate and distinct from all other books and accounts.

The governing body shall maintain a sufficient balance of cash in the sinking fund for the payment of principal and interest currently due on outstanding revenue bonds, but may in its discretion, and subject to any restrictions contained in the ordinances or resolutions authorizing such bonds, invest moneys in said sinking fund, or other net revenues held in reserves for bond payments, replacements or depreciation, in general obligation bonds of the United States of America or of the municipality itself. The income from all such investments shall remain part of the sinking fund or reserve from which the investment was purchased, and all such investments shall be collected at maturity or shall be sold when necessary to provide cash for the purposes of said sinking fund and reserves. Subject to the provisions of any such ordinances or resolutions the governing body may also apply net revenues to the purchase of outstanding revenue bonds which are not yet prepayable according to their terms, at such price as will yield a net return to the municipality, computed to the earliest redemption date of such bonds, and for the redemption of any of said bonds as and when the same become prepayable according to their terms.

Any such bonds and interest thereon shall be a valid claim of the holders thereof only against the sinking fund and the net income and revenues of the system pledged thereto and shall not constitute an indebtedness of the municipality within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955.

Amendment

The 1955 amendment added the second paragraph.

11-2220.1. Powers and duties of public service commission unaffected. Nothing contained in this act shall be construed to change or affect the powers and the duties of the public service commission of Montana prescribed in chapter 1 of Title 70 of the Revised Codes of Montana of 1947.

History: En. Sec. 5, Ch. 98, L. 1955.

Compiler's Note

The words "this act" would refer to Ch. 98, Laws of 1955, the other provisions of which are compiled as sections 11-2217 to 11-2220.

Effective Date

Section 6 of Ch. 98, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 1, 1955.

11-2229. (5247) Assessments as lien upon property.

References

Cited or applied in footnote 6 in Thibodo v. United States, 187 F 2d 249, 256.

11-2231. (5249) Form of bonds and warrants.

Cross-Reference

See note to sec. 11-2202. State ex rel. Truax v. Lima, 121 M 152, 193 P 2d 1008, 1010.

11-2238. (5252) Correction of assessment—collection upon relevy of tax.

Reassessments

This section does not authorize reassessments to make up for delinquent assessments. State ex rel. Truax v. Lima, 121 M 152, 193 P 2d 1008, 1013.

11-2245. (5259) Special improvement districts for lighting streets, etc.

Electric Lighting System

An improvement district may be created for the purpose of maintaining a system owned by a corporation or individual and the furnishing of electrical current therefor. Marchi v. Brackman, — M —, 299 P 2d 761, 764. (Concurring and dissenting opinion, — M —, 299 P 2d 761, 767.)

A special improvement district created under this section for the purpose of lighting the streets included within its boundaries may not be utilized to require the payment of maintenance costs, which in truth and in fact are not the cost of maintenance at all, but are rather designed to reimburse the power company for its own costs incurred in installing its own lighting system. Marchi v. Brackman, — M —, 299 P 2d 761, 766. (Dissenting opinion, — M —, 299 P 2d 761, 767.)

Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like. 19 ALR 2d 344.

11-2247. (5261) Resolution of intention—notice—protest—hearings, etc.

References

Cited or applied in Marchi v. Brackman, — M —, 299 P 2d) 761, 765.

11-2249. (5263) Bonds and warrants—interest—redemption.

References

Cited or applied in Marchi v. Brackman, — M —, 299 P 2d 761, 764.

11-2251. (5265) Assessing cost of system—resolution—hearings—funds.

References

Cited or applied in Marchi v. Brackman, — M —, 299 P 2d 761, 766.

11-2252. (5266) Maintenance of system—assessment of costs.

References

Cited or applied in Marchi v. Brackman, — M —, 299 P 2d 761, 765.

11-2269. (5277.1) Special improvement district revolving fund.

Cross-Reference

See note to sec. 11-2202. State ex rel. Truax v. Lima, 121 M 152, 193 P 2d 1008, 1012.

11-2282. Cancellation of extinguished liability accounts. The city council of any city and the town council of any town in the state of Montana is hereby authorized to cancel of record all or any special improvement district liability accounts incurred or issued prior to February 25, 1929, the liability of which has been extinguished by reason of issuance of a tax deed, or by the application of the statute of limitations or other laws of the state of Montana.

History: En. Sec. 1, Ch. 65, L. 1949; amd. Sec. 1, Ch. 2, L. 1951.

Title of Act

An act providing for cancellation of record of special improvement district warrants and liability accounts in cities in which warrants or liability accounts were incurred or issued prior to February 25, 1929, and the liability of which has been extinguished by reason of issuance of tax deeds, by application of statute of limitations, or other laws of the state of Montana.

Amendment

The 1951 amendment inserted the words "and the town council of any town."

Repealing Clauses

Section 2 of Ch. 65, L. 1949 and Sec. 2 of Ch. 2, L. 1951, repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 65, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

Section 3 of Ch. 2, 1951 provided the act should be in effect from and after its passage and approval. Approved January 25, 1951.

Municipal Corporations⇐375.
63 C.J.S. Municipal Corporations § 1208.

11-2283, 11-2284. Repealed.

Repeal

These sections (Secs. 1, 3, Ch. 44, L. 1951), relating to the recording by city, town, or county clerks of notice of proceedings for the installation of special improvements, were repealed by Sec. 1, Ch. 57, Laws 1953, effective February 20, 1953.

11-2285. Street parking improvement districts—abandonment. Whenever it is deemed to the best interest of a city or town or the inhabitants thereof by the mayor and council of such city or town the mayor and council of any city or town in the state of Montana, are authorized to abandon the maintenance of any street parking improvement district established in such city or town by the passage of a resolution of intention to abandon the same. After the passage of such resolution the city or town clerk shall give notice of such intention to abandon by one publication in a newspaper published in such city or town at least ten (10) days prior to the passage of a resolution abandoning the same. In case there is no publication of a newspaper in such city or town then notice shall be given by the posting of a notice of such intention to abandon in three (3) places within such district to be abandoned. Said notice shall specify the boundaries of such district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment, and that unless forty percent (40%) of the owners in the district file written protest with the clerk of such city or town before the passage of the resolution same will be passed. Said notice shall also set forth, when applicable, that it shall be the duty of the owners of the property abutting on the street parking district involved to maintain the same after such abandonment. Unless forty percent (40%) of the property owners owning property abutting such district file written protests against such abandonment upon the date set for the passage of

such resolution of abandonment said council shall forthwith pass a resolution declaring such district abandoned. It shall then be the duty of all property owners owning property abutting said district to maintain such portion thereof abutting their property. Such abandonment however shall not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against said district prior to the date of abandonment.

History: En. Sec. 1, Ch. 38, L. 1951.

Title of Act

An act authorizing the council of any city or town to abandon the maintenance of street parking improvement districts and establishing the procedure therefor.

Municipal Corporations⚖861.
64 C.J.S. Municipal Corporations § 1845.

11-2286. City and town council—powers and duties—repair and maintenance—resolutions. In all cities or towns the city or town council shall have power, and it is hereby made the duty of each city or town council, where it is necessary or advisable in connection with any special improvement district, to provide in addition to the construction of the proposed improvements for repairs to existing facilities, or for maintenance of improvements or repairs, or for both such repairs and maintenance, to include in the resolution or ordinance creating such special improvement districts or providing for assessments to defray the cost of improvements, repairs, and maintenance, a statement showing the allocation of the total amounts, either in dollars and cents or in percentages of said total amounts, to be assessed or assessed to said different purposes, to wit: to improvements, to repairs if any and to maintenance if any.

History: En. Sec. 1, Ch. 39, L. 1953.

Title of Act

An act to empower and require city and town councils where necessary or advisable in connection with special improvement districts to provide for repairs and maintenance, or both, to allocate total costs to improvements, repairs, and maintenance, and to designate such districts as special improvement and repair, or special improvement and maintenance, or special improvement, repair and maintenance districts, as the case may be.

Municipal Corporations⚖887.
64 C.J.S. Municipal Corporations § 1884.

11-2287. Designation of district. In all cases set out in the preceding section the city or town council shall designate the special district formed as a special improvement and repair district, or a special improvement and maintenance district, or a special improvement, repair and maintenance district, as the case may be.

History: En. Sec. 2, Ch. 39, L. 1953.

Repealing Clause

Section 3 of Ch. 39, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 39, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

Municipal Corporations⚖887.
64 C.J.S. Municipal Corporations § 1884.

CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section 11-2303. Limitation on amount of indebtedness.
11-2305. Form of bonds.
11-2314. Publication of notice of sale.

11-2301. (5278.1) **Creation of indebtedness—submission to taxpayers.**

Application of Law

The phrase "under its powers as set forth in any statute or statutes of this state" means under the city's or town's power to incur indebtedness or issue general obligation bonds as set forth in any statute. Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 712.

City or town council is not authorized to issue general obligation bonds to carry out any of the powers enumerated in section 11-901 et seq. Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 712.

Operation and Effect

This is a procedural statute rather than a grant of authority. Dietrich v. Deer Lodge, 124, M 8, 218 P 2d 708, 712.

Inclusion of tax exempt property in determining value of taxable property for debt limit purposes. 38 ALR 2d 903.

11-2303. (5278.3) **Limitation on amount of indebtedness.** No city or town shall issue bonds for any purpose in an amount which, with all outstanding and unpaid indebtedness, will exceed five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes; provided, however, that for the purpose of constructing a sewerage system, or procuring a water supply or constructing or acquiring a water system for a city or town, which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted, which is unpaid or outstanding, shall not in the aggregate exceed ten percentum (10%) over and above the five per centum (5%) heretofore referred to, of the total value of the taxable property therein as ascertained by the last assessment for state and county taxes. The words "value of the taxable property" as used in this section, are used in the same sense as in section 6 of Article XIII of the Constitution and shall be given the same meaning; and provided further, that the issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds shall not be deemed the incurring of a new or additional indebtedness, but shall be deemed merely the changing of the evidence of outstanding indebtedness.

History: En. Sec. 3, Ch. 160, L. 1931; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955.

Amendments

The 1951 amendment raised the debt limit from three per cent to five per cent.

The 1955 amendment in the second sentence inserted the words "or for the procurement of a water supply, or for both such purposes," after the word "system" and the words "in the aggregate" between the words "not" and "exceed."

Effective Dates

Section 2 of Ch. 116, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Section 3 of Ch. 34, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

11-2304. (5278.4) **Term of bonds—rates of interest.**

Application of Amendment

The amendment to this section by Laws 1945, Ch. 62, sec. 2 does not apply to municipal bonds that were issued and sold prior to its enactment. Philipsburg v. Porter, 121 M 188, 190 P 2d 676, 679.

Redemption of Bonds

Where municipal bonds were issued prior to the 1945 amendment of this section they could not be redeemed prior to maturity when such option was not stated in the bonds. Philipsburg v. Porter, 121 M 188, 190 P 2d 676, 678.

11-2305. (5278.5) **Form of bonds.** All bonds hereafter issued by any city or town shall be either amortization bonds or serial bonds, and all things being equal amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bond," as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the payments becoming due the first year, or the first and second years, may vary in amount from the other payments to the extent resulting from fixing the amount of each bond of the other payments at one hundred dollars ($100.00), five hundred dollars ($500.00), or some multiple thereof.

History: En. Sec. 5, Ch. 160, L. 1931; amd. Sec. 2, Ch. 152, L. 1953.

Compiler's Note

Section 1 of Ch. 152, Laws 1953 is compiled as Sec. 11-966.

Amendment

The 1953 amendment in the proviso in the last paragraph substituted the words "payments becoming due the first year, or the first and second years," for the words "final payment" and inserted the words "five hundred dollars ($500.00)."

Effective Date

Section 3 of Ch. 152, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

Municipal Corporations⇐923.
64 C.J.S. Municipal Corporations § 1935.

11-2314. (5278.14) **Publication of notice of sale.** The city or town council or commission shall cause such notice to be published one in each calendar week in each of the four successive calendar weeks (4 publications) immediately preceding the week which contains the date of sale, in a newspaper of general circulation printed and published, if there be one, and if not then in a newspaper of general circulation, in said city or town, printed and published in the county in which said city or town is located; and the council or commission may, in its discretion, cause such notice to be published in such other newspaper or newspapers published either within or without the state as in the opinion of the council or commission will be most likely to give notice of such sale to prospective bidders. The city or town clerk must, at least fifteen (15) days before the date fixed for the sale of general obligation bonds only, send a copy of such published notice to the secretary of the state board of land commissioners, and shall thereupon furnish to the said secretary a transcript of the proceedings had for

the issuance of general obligation bonds only, and such other information relating thereto as the secretary may find necessary.

History: En. Sec. 14, Ch. 160, L. 1931; amd. Sec. 1, Ch. 38, L. 1955.

Amendment

The 1955 amendment inserted the words "or commission" after the word "council" each time they appear in this section; in the first sentence substituted the words "one in each calendar week in each of the four successive calendar weeks (4 publications) immediately preceding the week which contains" for "once each week for four (4) successive weeks immediately preceding" and in the last sentence substituted "general obligation bonds only" for "such bonds" the first time it appears and for the word "bonds" the second time it appears.

11-2320. Liability on bonds.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR 2d 559.

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section 11-2402. Definitions.
11-2403. Additional powers of municipalities.
11-2404. Authorization of undertaking—form and contents of bonds.
11-2407. Lien of bonds.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building.

(b) The term "municipality" shall include any city or any town, however organized.

(c) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949.

Compiler's Note

The Laws of 1949, Ch. 42 contained no section 2.

Amendment

The 1949 amendment added the words "public airport construction and public airport building" to the definition for "undertaking."

Repealing Clause

Section 4 of Ch. 42, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 42, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 23, 1949.

Municipal Corporations⇐911.
64 C.J.S. Municipal Corporations § 1907.

11-2403. Additional powers of municipalities. In addition to the powers which it may now have, any municipality shall have power under this act: (a) To construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better or extend any undertaking, within or without the municipality, or partially within or partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith, (b) to operate and maintain any undertaking and furnish the

service, facilities and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such municipality, (c) to issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking, and/or to refund bonds issued for any of the foregoing purposes, whether issued under authority of this chapter or of any other applicable law, (d) to prescribe and collect rates, fees, and charges for the services, facilities and commodities furnished by such undertaking, (e) to enter into cooperative agreements with and accept contributions from industrial establishments relative to the planning, construction, lease or other acquisition, maintenance and operation of undertakings, and to apply for and accept grants and loans or any other aid which the United States of America or any agency thereof may give or make to any political subdivision or agency of this state for undertakings, including all necessary actions preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution, and to make contracts and execute instruments containing such terms, provisions and conditions as, in the discretion of the governing body of the municipality, may be necessary, proper or advisable for the purpose of obtaining such aid, (f) to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provisions and operation by the municipality of sewerage facilities when the governing body of such municipality determines such action to be in the public interest and otherwise essential in order to abate or reduce the pollution of waters caused by discharges of industrial waste by such industrial establishment, and to provide for the periodical payment by said industrial establishment to the municipality of an amount at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing (including the payment of principal and interest charges, if any) and of operating and maintaining the sewerage facilities serving such industrial establishment, and (g) to pledge to the punctual payment of said bonds issued under this act and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereto thereafter constructed or acquired) or of any part of such undertaking, sufficient to pay said bonds, and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenue. The governing body of the municipality in determining such cost, may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this act. Any two or more municipalities through their respective governing bodies are hereby authorized and empowered to enter into and perform such contracts and agreements as they may deem proper for or concerning the planning, construction, lease or other acquisition and the finance of undertakings, in whole or in part, and the maintenance and operation thereof. Any such municipalities so contracting with each other may also provide in any contract or agreement for a

board, commission or such other body as their governing bodies may deem proper for the supervision and general management of the undertakings and for the operation thereof, and may prescribe its powers and duties and fix the compensation of the members thereof.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951.

Amendments

The 1949 amendment inserted clauses (e) and (f), renumbered former clause (e) as (g) and added the last two sentences.

The 1951 amendment inserted the words "and/or to refund bonds issued for any of the foregoing purposes, whether issued under authority of this chapter or of any other applicable law" in clause (c).

11-2404. Authorization of undertaking—form and contents of bonds. The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semi-annually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957.

Amendments

The 1951 amendment inserted the words "chapter," enclosed the word "act" in

parentheses, inserted the words "upon such question" and "and conducted," enclosed "section 23-202" in parentheses and inserted the words "sections 11-2308 to 11-2310, inclusive," and added the proviso at the end of the first paragraph.

The 1957 amendment deleted the word "act" in parentheses wherever it had been inserted by the 1951 amendment; substituted the word "chapter" for "act" near the end of the first and second paragraphs; deleted "(section 23-202)" which appeared immediately preceding "sections 11-2308 to 11-2310" and increased the rate of interest from five per cent to six per cent.

11-2407. Lien of bonds. The resolution or resolutions shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 7, Ch. 126, L. 1939; amd. Sec. 2, Ch. 52, L. 1949.

Amendment

The 1949 amendment adopted this section providing that the resolution should specify the relative security of the liens, the section formerly providing that bonds of the same issue should be equal and that prior issued bonds should be ahead of bonds of a subsequent issue.

Repealing Clause

Section 3 of Ch. 52, L. 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

11-2701. (5305.1) Building restrictions by cities and towns authorized.

Validity of building height regulations. 8 ALR 2d 963.

Exclusion from municipality of industrial activities inconsistent with residential character. 9 ALR 2d 683.

Zoning regulations in respect of intoxicating liquors. 9 ALR 2d 877.

11-2702. (5305.2) Districts for effecting building restrictions.

Validity of building height regulations. 8 ALR 2d 963.

11-2706. (5305.6) Zoning commission.

Cross-Reference

Performance of duties by planning board, where city council represented on planning board, sec. 11-3854.

11-2707. (5305.7) Board of adjustment.

Validity and construction of provisions of zoning statute or ordinance respecting protest or petition by property owners. 4 ALR 2d 335.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings. 21 ALR 2d 551.

11-2708. (5305.8) Enforcement and remedies.

Right to resume nonconforming use after period of nonuse or of a different use from that in effect at or before the time of zoning. 18 ALR 2d 725.

CHAPTER 28—VACATION AND ABANDONMENT OF STREETS, PARKS AND TOWNSITES

Section 11-2803. Vacation of plats in abandoned townsites.

11-2803. (5308) **Vacation of plats in abandoned townsites.** (1) When there shall have been filed in the office of the county clerk of any county of this state a plat of any village or townsite, or a plat of any vineyard tracts, acreage tracts, suburban tracts or community tracts designated

in section 11-614, and it is desired by the owners of said lands to vacate said plat, the county commissioners of the county in which such plat is filed, upon petition of the owners of all the lands described in said plat, and upon such conditions as may be reasonable, shall cancel and annul said plat and shall vacate the lots, streets, alleys, parks and boulevards, if any, described in said plat, and thereafter the designation of said property shall be by metes and bounds or by legal subdivisions if the circumstances may require and the same shall be assessed accordingly. If any post office, store or other business establishment shall be located within such platted area, that fact shall not prevent the cancellation and vacating of said plat in accordance with the terms of this act, but, in all cases where it shall be necessary to designate the location of any such post office, store or other business property by metes and bounds for purposes of identification, such designation shall be made in the order to be entered by the board of county commissioners.

(2) Petitions under the terms of this act shall be signed by all the owners of the land in such platted area, shall distinctly refer to the original plat for purposes of identification and shall disclose that the petitioners are the owners of all the lands described in said plat, and that no rights of any person have intervened since the filing of said plat which would be adversely affected by the cancellation and annulment thereof. Provided, however, that when only a portion or portions of any village or townsite in any unincorporated village or town is sought to be vacated or excluded therefrom and said portion or portions is not less than three blocks in area, and situated at the limits or boundaries of said village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where said village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded, which petition shall be addressed to the district court of the said county, setting forth the description of the portion or portions sought to be excluded and the reason or reasons for desiring such portion or portions to be excluded. A citation shall thereupon be issued by the judge of the court before whom said matter is pending, citing all persons interested in said matter to appear before said court at a time and place specified in said citation, but at a time not less than three (3) weeks from the date of said citation, which citation shall be published in a newspaper of regular circulation in the said county, or if no such newspaper is in said county, then in such a newspaper located in an adjoining county of the state, which citation shall be published once a week for two (2) successive weeks before the date of said hearing.

(3) Upon the hearing of said petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion or portions of said village or townsite as prayed for in said petition, including any streets, alleys, parks or boulevards upon which no public easement or easements shall vest, and such excluded property shall be described by metes and bounds in the decree of the court, and said property shall be assessed accordingly.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955.

Amendments

The 1951 amendment added subd. (4).

The 1955 amendment in the proviso clause in subd. (2) substituted "three blocks" for "four blocks" and deleted subd. 4 which read "(4) When a subdivision, lying entirely outside of or partly inside and partly outside of the limits of any incorporated or unincorporated city or town, is over one half owned by a county, the county commissioners may, after publication of notice for two (2) consecutive weeks in a newspaper of general circulation in the county, of a public hearing, and conducting said public hearing to determine whether greater benefit will result from the vacation and exclusion of the blocks than from their being continued as blocks, vacate and exclude such blocks or such portions of such blocks as lie outside of the city limits; provided, however, that such vacation of blocks shall not cut out any persons' ingress or egress or interfere with any vested easements or rights; provided, further, that any person who believes his rights to be prejudiced by such action may appeal to the district court of the said county. Any person so appealing to the said district court shall be required to post a bond in the manner prescribed by law in a sufficient amount to cover the costs of the action and must thereafter show that greater damage will be done by such vacation of land than would result from its being maintained in its existent status."

Separability Clause

Section 2 of Ch. 70, L. 1951 read "This act shall be severable and should any clause, sentence, part or portion for any reason be adjudged by any court of competent jurisdiction to be invalid, unconstitutional or inoperative, such judgment shall not impair the validity of the act as a whole or the remainder of this or any other part thereof that can be given effect, but shall be confined in its operation to the particular clause, sentence, part or portion directly adjudged to be so invalid, unconstitutional or inoperative."

Repealing Clause

Section 3 of Ch. 70, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 70, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 23, 1951.

CHAPTER 31—COMMISSION FORM OF GOVERNMENT

Section 11-3123. Place of office of councilmen—salaries and compensation.
11-3135. Abandonment of commission form.
11-3136. Requirements of petitions.

11-3101. (5366) **Any city may reorganize under commission form.**

References

Cited or applied in State ex rel. Helena Housing Authority v. City Council of City of Helena, 125 M 592, 242 P 2d 250, 251.

11-3123. (5386) **Place of office of councilmen—salaries and compensation.** The council shall have their office at the city hall, and their total compensation shall be as follows: In cities of the third class having a population of less than three thousand (3,000), the annual salary of the mayor shall not exceed six hundred dollars ($600.00), and the annual salary of each councilman shall not exceed five hundred dollars ($500.00); in cities of the third class having a population of three thousand (3,000) or more, the annual salary of the mayor shall not exceed one thousand dollars ($1,000.00), and the annual salary of each councilman shall not exceed nine hundred dollars ($900.00); in cities of the second class, the annual salary of the mayor shall not exceed one thousand six hundred and fifty dollars ($1,650.00), and the annual salary of each councilman shall not exceed one thousand five hundred dollars ($1,500.00); in cities of the first class having a population of less than thirty thousand (30,000), the annual salary of the mayor shall not exceed four thousand five hundred dollars ($4,500.00), and the annual salary of each councilman shall not exceed three thousand eight hundred

dollars ($3,800.00); in cities of the first class having a population of thirty thousand (30,000) and over, the annual salary of the mayor shall not exceed four thousand eight hundred dollars ($4,800.00), and the annual salary of each councilman shall not exceed four thousand dollars ($4,000.00).

Any increase in salary occasioned by the advance in class or increase in population of any city shall commence with the month next after the publication of the census showing such advance in class or increase in population.

Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

The salary or compensation of all other employees of such city shall be fixed by the council, and shall be payable monthly, or at such shorter periods as the council shall determine.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951.

Amendments

The 1949 amendment substituted the words "not exceed" for "be" in each instance preceding the salary and raised the maximum salaries of various officers as follows: Mayor in cities of first class of less than 30,000, from $3,600 to $4,200; councilmen in such cities, from $3,000 to $3,600; mayor in cities of 30,000 to 50,000, from $4,000 to $4,500; councilmen in such cities, from $3,400 to $3,700; mayor in cities of 50,000 or more, from $4,500 to $4,700; councilmen in such cities, from $3,500 to $3,800.

The 1951 amendment raised the salaries of mayor and councilmen in cities of the first class as follows: Mayors in cities of less than 30,000, from $4,200 to $4,500; councilmen in such cities from $3,600 to $3,800; mayors in cities over 30,000 from $4,500 to $4,800 and councilmen in such cities from $3,800 to $4,000.

Repealing Clauses

Section 2 of Ch. 189, L. 1949 and Sec. 2 of Ch. 87, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 189, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 3, 1949.

Municipal Corporations⇐162(1).
62 C.J.S. Municipal Corporations § 536.

11-3135. (5397) **Abandonment of commission form.** Any city which shall have operated for more than one year under the provisions of this act may abandon such organization hereunder and accept the provisions of the general law of the state then applicable to cities of its population.

Upon the petition of not less than ten percent (10%) of the electors of such city registered for the last preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition be filed at least sixty (60) days prior to the date of such election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population; or if formerly organized under special charter shall resume said special charter?"

If the majority of the votes cast at such election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities

of any nature of such city, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided for by section 11-3132 of this code, in so far as the provisions thereof are applicable; or if now organized under special charter, may resume said special charter. Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question shall not be submitted again for a period of two (2) years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of two (2) years.

History: En. Sec. 32, Ch. 57, L. 1911; amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. 5397, R. C. M. 1921; amd. Sec. 1, Ch. 105, L. 1951.

Amendment

The 1951 amendment reduced the number of electors having right to petition from 25% to 10%, omitted the words "a special election shall be called" which followed "general election" in the second paragraph, substituted that part of the second paragraph beginning with "the following proposition" and ending with the colon for the words "at which the following proposition only shall be submitted", and omitted the word "special" preceding "election" in the fourth paragraph.

11-3136. (5398) **Requirements of petitions.** Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

History: En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R. C. M. 1921; amd. Sec. 2, Ch. 105, L. 1951.

Amendment

The 1951 amendment omitted the words "age, and" which preceded "length of residence."

Repealing Clause

Section 3 of Ch. 105, L. 1951 repealed all acts and parts of acts in conflict therewith.

Municipal Corporations⇐48(1).
62 C.J.S. Municipal Corporations § 88.

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section 11-3218.1. Dispensing of general election.
11-3248. Compensation of commissioners and mayor.
11-3253. Auditing books of accounts, records, etc.—matters to be included in statement—printing and distribution of report—publication of summary.
11-3286. Officer authorized to execute conveyances of real property—resolution.

11-3218.1. Dispensing of general election. Whenever, in any city operating under a commission-manager form of government at a primary election held in accordance with section 11-3215, the number of nominees shall not exceed the number of officers to be elected, then such nominees shall be deemed duly elected to the respective offices. Then, in that event, no general municipal election shall be held in said city for said year. All matters, other than the election of officers, upon which the general public shall vote

shall be disposed of at the primary election unless a special election is held for that purpose.

History: En. Sec. 1, Ch. 75, L. 1955.

Title of Act

An act providing for the dispensing of a general election in cities operating under the commission-manager form of government when the nominations do not exceed the offices to be filled and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 75, Laws 1955 repealed all acts and parts of acts in conflict therewith.

11-3248. (5447) **Compensation of commissioners and mayor.** The salary of each commissioner shall be as follows: For each meeting attended, cities or towns with less than twenty-five thousand inhabitants, ten dollars ($10.00); cities with more than twenty-five thousand inhabitants, not to exceed twenty dollars ($20.00); provided, that not more than one fee shall be paid for any one day. The salary of the commissioner acting as mayor shall be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949.

Amendment

The 1949 amendment raised the compensation in cities and towns with less than 25,000 from five dollars to ten dollars and in cities of more than 25,000 from not exceeding ten dollars to not exceeding twenty dollars.

Repealing Clause

Section 2 of Ch. 10, L. 1949 repealed all acts and parts of acts in conflict therewith.

11-3253. (5452) **Auditing books of accounts, records, etc.—matters to be included in statement—printing and distribution of report—publication of summary.** The commission shall cause an annual audit to be made of the books of account, records and transactions of the administrative department of the municipality. Such audit, during each fiscal year, shall be made by the state examiner. The duty of the state examiner shall include the certifications of all statements required under section 11-3267 of this code. Such statements shall include a general balance sheet, exhibiting the assets and liabilities of the municipality, supported by departmental schedules and schedules for each utility publicly owned or operated; summaries of income and expenditure, supported by detailed schedules; and also comparisons, in proper classifications, with the previous year. The state examiner shall have the power, and it shall be his duty to make at least one examination each year of the books and accounts of any city operating under the commission-manager form of government, and to prescribe the necessary records, and systems of accounting as provided in sections 82-1002, 82-1005, 82-1007, 82-1008, 82-1009 and 82-1010 of the Revised Codes of Montana, 1947, and the actions of the city commissioners and all other officers thereof shall be subject to the provisions of said sections, and such city shall pay the fee provided for in section 5-905 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 54, Ch. 152, L. 1917; re-en. Sec. 5452, R. C. M. 1921; amd. Sec. 1, Ch. 208, L. 1953.

Amendment

The 1953 amendment substituted the words "an annual" for "a continuous" in the first sentence; substituted "the state examiner" for "one or more well-qualified accountants," in the second sentence; substituted "state examiner" for "auditor" in the third sentence; deleted a sentence which appeared at the end of the section which read: "The report of such audit for

each previous year shall be printed and a copy thereof furnished the state bank examiner of Montana, to each member of the commission, and to each citizen who may apply therefor; and a condensed summary thereof shall be published in the manner provided by the commission" and added the last sentence.

Repealing Clause

Section 3 of Ch. 208, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 208, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 4, 1953.

11-3286. Officer authorized to execute conveyances of real property—resolution. In all cities operating under the commission-manager form in Montana, the mayor is hereby designated as the proper officer to execute conveyances of real property; however, a majority of the commission may designate the city manager to execute a conveyance. In either case, the authority to act shall be authorized by the passage of a resolution.

History: En. Sec. 1, Ch. 54, L. 1955.

Title of Act

An act designating the officers in cities operating under the commission-manager form to execute conveyances of real estate.

Repealing Clause

Section 2 of Ch. 54, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 36—METROPOLITAN SANITARY DISTRICTS

(Repealed—Section 14, Chapter 185, Laws of 1957)

11-3601 to 11-3611. Repealed.

Repeal

These sections (Secs. 1 to 11, Ch. 292, L. 1947), relating to metropolitan sanitary districts, were repealed by Sec. 14, Ch. 185, Laws 1957. For new provisions see 16-4401 to 16-4413.

The repealing clause also contained a savings provision. It read: "Chapter 292, Laws of 1947, is hereby repealed, providing however, that any metropolitan sanitary sewer districts established under the provisions of chapter 292, Laws of 1947, shall be valid, and any obligations incurred thereunder shall in nowise be affected by the repeal of said chapter 292, Laws of 1947."

CHAPTER 37—OFF-STREET PARKING FACILITIES

Section 11-3701. Purpose of act.
11-3702. Definitions.
11-3703. Creation of parking commissions—revenue bonds.
11-3704. Members of commission—appointment—qualifications—vesting of commission powers—expenses and compensation—term of office—chairman—removal.
11-3705. Estimate and appropriation of money required—report of transactions to be filed.
11-3706. Inaction—suspension of commission.
11-3707. Commission a public body—powers specified.
11-3708. Acquisition of existing parking facilities—limitation.
11-3709. Lease—bids.
11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation.
11-3711. Revenue bonds—obligation of commission only.
11-3712. Types of bonds—sources from which payable.
11-3713. Authority to determine terms and conditions.
11-3714. Indenture for security of bonds.
11-3715. Additional clause in indenture—trustee for bondholders.
11-3716. Series or divisions of bonds.
11-3717. Interest on bonds—redemption.
11-3718. Signatures on bonds.

11-3719. Maturity dates.
11-3720. Sale of bonds—payment of interest—lien of bonds—temporary bonds—tax exemption—legal investments—refunding bonds.
11-3721. Funding or refunding bonds—negotiable instruments.
11-3722. Rates, fees and charges—lien.
11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee.
11-3724. Default—rights of obligees.
11-3725. Property of commission exempt from execution—exception.

11-3701. Purpose of act. It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas, and the lack of adequate off-street parking facilities in some cities, is against the public interest; and the purpose of this act is to provide means whereby cities, in which additional off-street parking facilities is considered necessary, may obtain and provide same.

History: En. Sec. 1, Ch. 223, L. 1951; amd. Sec. 1, Ch. 127, L. 1955.

Title of Act

An act relating to the acquisition, construction, establishment, maintenance and financing of off-street parking facilities for the parking of motor vehicles by a city of the state of Montana; and providing for the leasing to and operation of by private operators, firms, companies, or corporations; and providing ways and means wherein a city may create a parking commission or whereby the legislative body of a city may function as a parking commission, the issuance of revenue bonds; and defining the powers and duties of parking commissions, and a city with respect to off-street parking facilities.

Amendment

The 1955 amendment inserted the words "and provide" before the word "same" and deleted the words "by lease of sites or site to private enterprise after the city has acquired a suitable site, or sites, by purchase, gift, or under the law of eminent domain applicable to such city" which appeared after the word "same."

Municipal Corporations⚷861.
64 C.J.S. Municipal Corporations § 1845.

11-3702. Definitions. The following terms, wherever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Commission" or "parking commission" shall mean any of the public corporations which may be created by section 4 [11-3704] of this act.

(b) "The city" shall mean the particular city for which a particular commission may be created, or the legislative body which may act as such a commission.

(c) "Legislative body" shall mean, in the case of a city, the city council, or other body in which the general legislative powers of the city are vested.

(d) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(e) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(f) "Obligee of the commission" or "obligee" shall be any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a parking facility, or any assignee or assignees of such lessor's interest, or any part thereof, and the state, or the United States or any agency of either, when a party to any contract with a commission by which aid or a loan is given or made to the commission.

(g) "State public body" means the state, or any city, commission, or any other subdivision or public body of the state.

(h) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this act.

(i) "Indenture" as used in this act means ordinance, resolution, or indenture which may be passed, adopted or entered into by a commission or by the legislative body of a city and "clause" includes article, section, subsection, paragraph, sentence or provision.

History: En. Sec. 2, Ch. 223, L. 1951.

Cross-Reference

Acquisition of parking areas by cities or towns, sec. 11-1018.

11-3703. Creation of parking commissions—revenue bonds. A city may create, as provided for in this section, a public body corporate and politic to be known as the "parking commission" of the city. The commission of any city shall not transact any business or exercise any powers under this act unless and until the legislative body of the city shall by resolution declare at any time hereafter that there is need for a parking commission to function in such city. The determination as to whether there is need for a commission to function may be made by the legislative body on its own motion or upon the filing of a petition signed by one hundred (100) residents of the city, asserting that there is need for a commission to function in such city and requesting that the legislative body so declare.

In any suit, action or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the legislative body declaring the need for the commission to function. A city shall not transact any business or exercise any powers of this act unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this act.

Either or both such resolutions may be adopted by the legislative body of a city. If both such resolutions are adopted they shall clearly specify areas within the city less than the whole thereof, within which, or projects over which, the commission and the city, respectively, are to have jurisdiction and control. The division of such jurisdiction and control shall be as so specified, but may be changed from time to time by action of both the legislative body and the commission, to such extent as may be consistent with obligations to bondholders assumed under this act.

The power to issue revenue bonds as provided in this act shall not be operative in any city until the legislative body, either at a general or a special election, shall submit to the electors, whose qualifications shall be the same as those required for voting at municipal elections in the city for elective officers thereof, the question as to whether the legislative body, or the commission, or both, shall be authorized to adopt the revenue bond method of financing projects provided for herein. Such question may be placed before the electors and notice thereof given in the same manner as provided by law for referring ordinances of the city to the electors. The provisions relating to the qualifications of electors and manner of submis-

sion of the question to the electors for the purposes of this act shall govern and be controlling, any provision of law to the contrary notwithstanding.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955.

Amendment

The 1955 amendment in the first sentence of the fourth paragraph substituted the words "whose qualifications shall be the same as those required for voting at municipal elections in the city for elective officers thereof" for the words "of the city"; deleted a former second sentence which read: "If at such election a majority of the voters voting upon the proposition shall vote in favor of such proposition, such commission, or such city, or both, as may have been so specified, may from time to time, issue revenue bonds in accordance with the provisions of this act for projects provided for herein," and added the present second and third sentences.

Maintenance of parking station. 37 Am. Jur. 752, Municipal Corporations § 136.

Off-street public parking facilities. 8 ALR 2d 272.

Parking facilities, provision of, as exercise of governmental or proprietary function. 8 ALR 2d 397.

11-3704. Members of commission—appointment—qualifications—vesting of commission powers—expenses and compensation—term of office—chairman—removal. When the legislative body of a city first adopts a resolution declaring need for a parking commission to function, the mayor, with the approval of the legislative body, shall appoint five (5) electors of the city as members of the commission. The powers of each commission shall be vested in the members thereof then in office. Members shall receive their actual and necessary expenses, including traveling expenses and may receive such other compensation as the legislative body may prescribe.

Three [3] of the members who are first appointed shall be designated to serve for terms of one [1], two [2], and three [3] years, respectively, from the date of their appointments, and two [2] shall be designated to serve for terms of four [4] years from the date of their appointments. Thereafter members shall be appointed as aforesaid for a term of office of four [4] years, except that all vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his successor has been appointed and has qualified.

The appointing officer shall designate which of the members of the commission shall be the first chairman, but when the office of chairman of the commission becomes vacant thereafter, the commission shall elect a chairman from among its members. The term of office as chairman of the commission, unless otherwise prescribed by the legislative body of the city, shall be for the calendar year, or for that portion thereof remaining after each such chairman is designated or elected.

A member of a commission may be removed by the mayor with the consent of the legislative body of the city.

History: En. Sec. 4, Ch. 223, L. 1951.

11-3705. Estimate and appropriation of money required—report of transactions to be filed. When the commission created for any city becomes authorized to transact business and exercise its powers, the legislative body of the city may, subject to its fiscal law, at that time, and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission, and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

Each such commission shall file with the legislative body a detailed report of all its transactions, including a statement of all revenues and expenditures, at quarterly, semi-annual or annual intervals as the legislative body may prescribe and shall publish at least once annually in a newspaper of general circulation, published in the city, or if none is so published then in such newspaper of general circulation as the commission may deem most likely to give notice to the residents of the city, a statement of all its financial affairs, audited by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951.

11-3706. Inaction—suspension of commission. After the lapse of four years from the date of adoption of a resolution declaring the need for a parking commission to function in a city, if such commission shall not have acquired or entered into possession of land for a parking facility, or issued bonds, the legislative body of such city may by resolution declare that there is no need for such commission in the community. Thereupon the offices of the members of the commission shall become vacant and the capacity of the commission to transact business or exercise any powers shall be suspended and shall remain suspended until the legislative body thereafter adopts a resolution declaring the need for the commission to function.

After adoption of a resolution declaring there is no need for such commission to function, or while any such resolution is in effect, the legislative body of a city shall have power to wind up the affairs of the commission and shall have title to all property of the commission for the purpose of off-street parking only, to be leased to, and operated by, companies, individuals or corporations.

The legislative body of a city, at any time after the activation of a parking commission, may adopt by a two-thirds vote thereof, a resolution transferring the property of the commission to the city and the city may, through such department as it may determine, exercise its powers in regard thereto by virtue of the Constitution, or this or other general law, but no such transfer shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 6, Ch. 223, L. 1951.

11-3707. Commission a public body—powers specified. Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental function, and subject to the limitations imposed by this act, shall have the following powers in addition to the others herein granted:

(a) To sue and be sued; to have a seal; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(b) To make, and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this act to carry into effect the powers and purposes thereof.

(c) To select and appoint or remove such officers, agents, counsel and employees, permanent and temporary, as it may require, and to determine their qualifications, duties and compensation. The powers of the commis-

sion under this subsection (c) shall be subject to all limitations and rights applicable to similar employment by the city, unless the legislative body, by resolution, shall otherwise determine.

(d) For the purpose of off-street parking, to purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property, or any interest therein, together with any improvements thereon; to acquire by the exercise of the power of eminent domain any property in accordance with the applicable provisions of the law of eminent domain, except that no property of a state public body may be acquired without its consent, upon approval of the city council; to sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest therein, provided such transactions are for off-street parking purposes; to lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights of way necessary or convenient therefor; to insure or provide for the insurance of any real or personal property or operations of the commission against risks or hazards; to acquire, construct, rent, lease, maintain, and repair, such real and personal property, or any portion thereof either on behalf of the commission or as an agent of the city, including the leasing of the operation thereof, the leasing for incidental commercial purposes of surplus space or space which it is not economical to use for parking purposes, and as an incident to the operation of any parking facility, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, provided that the city or parking commission shall be prohibited from operating any such additional, secondary and incidental facilities; provided, however, that such incidental use or uses must be secondary to the primary use as a parking facility, and in any event the portion of the land devoted to such incidental use or uses shall not exceed ten per cent [10%] of the surface area of such property, and if a building is erected on such property for the purpose of parking motor vehicles, then such incidental use or uses of such building shall not occupy more than ten per cent [10%] of the floor area; provided, further, that the commission or the city shall lease such space to private operators; to receive, control, and order the expenditure of, any and all moneys and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision, (i) all revenues derived from operations of the commission, (ii) all money appropriated or made available by the city pursuant to section 7 [11-3707] of this act, or otherwise, (iii) the proceeds of all financial aid or assistance by the city, federal or state governments, (iv) the proceeds of assessments levied, (v) the proceeds of all revenue bonds issued pursuant to this act by the city for parking facilities.

(e) To invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

(f) To exercise all or any part or combination of the powers herein granted.

(g) To do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of this act.

History: En. Sec. 7, Ch. 223, L. 1951.

11-3708. Acquisition of existing parking facilities—limitation. No existing parking facility shall be acquired by the exercise of the power of eminent domain by a commission or the city except after public hearing following notice of the date, time, place, and purpose of such hearing published once not less than ten [10] nor more than twenty [20] days prior to the date of such hearing; provided, however, that no property being used as a facility or facilities for the parking and/or storing of motor vehicles shall be acquired by a commission as heretofore provided by this act, unless the project to be furnished or constructed by a commission which necessitates the acquisition of such parking facility or facilities will encompass an area of land and parking area not less than three (3) times the area of land and parking area encompassed by the existing parking facility.

History: En. Sec. 8, Ch. 223, L. 1951.

Off-street public parking facilities. 8 ALR 2d 373.

11-3709. Lease—bids. The commission or city may lease any project acquired by it under the provisions of this act to the highest responsible bidder after notice, which shall consist of the publication of a notice inviting bids, by two [2] or more insertions thereof, not less than five (5) days apart, in a newspaper of general circulation printed and published in such city, or city and county, which publication shall be commenced not less than fifteen (15) days prior to the date set in the notice for the opening of bids; or if there be no newspaper of general circulation printed or published therein, by posting copies of said notice inviting bids in at least three (3) public places in the city, or city and county, not less than fifteen (15) days prior to the date set in the notice for the opening of bids. Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased and the minimum rental to be paid under such lease; provided if the commission or city shall by resolution entered upon its minutes find and determine that the purposes of this act will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking lot, subject to the ordinances, rules and regulations of the city pertaining to municipal parking lots.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955.

Amendment

The 1955 amendment substituted the word "may" for "shall" near the beginning of this section and substituted the present proviso clause for the following: "provided, that the commission may reject any and all bids presented and readvertise; provided further, if no reasonable bid is received the commission must readvertise once again. If no valid bid is received after such readvertisement, then and only then may the commission or city operate such project itself. In the event the commission or city so operates such project it must readvertise for bids in the manner hereinabove provided once every year."

11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation. All parking facilities of a commission shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated. In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access for the purposes of the commission to the services and facilities of the city planning department, the city engineer, the police department, the fire department and such other departments and offices of the city as may be appropriate therefor. The legislative body may in the resolution declaring need for a parking commission to function provide for a sum to be paid annually by the commission to the city, which shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property.

History: En. Sec. 10, Ch. 223, L. 1951.

11-3711. Revenue bonds—obligation of commission only. The commission shall have power to issue revenue bonds in its name. These bonds shall constitute obligations of the commission only, and neither the payment of the principal or interest of any such bond constitutes a debt, liability or obligation of the city or of the state of Montana. All bonds issued by the commission shall contain a recital on their face that neither the payment of the principal or any part thereof nor any interest thereon constitutes a debt, liability or obligation of the city or of the state.

History: En. Sec. 11, Ch. 223, L. 1951.

11-3712. Types of bonds—sources from which payable. A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable: (a) Exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds, or with such proceeds together with financial assistance from the state or federal governments in aid of such projects; (b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds; (c) from its revenues generally; (d) from any contributions or other financial assistance from the state or federal governments; (e) from parking meter revenues of the city which may be appropriated by the governing body of the city; or (f) by any combination of these methods. Any such bonds may be additionally secured by a pledge of any parking meter revenues. The legislative body of a city may pledge or allocate such parking meter revenues for periods of years for the financing or operation of any project authorized by this act and the payment of principal and interest on all or any revenue bonds issued and outstanding pursuant to this act, until all of such bonds have been fully paid.

History: En. Sec. 12, Ch. 223, L. 1951.

11-3713. Authority to determine terms and conditions. Each commission shall have power to determine, by resolution, with reference to each

issue of revenue bonds to be issued under this act, all the terms and conditions of such bonds, and of the sale and issuance thereof, and any and all matters necessary or appropriate to be determined in connection therewith, excepting only as such power is limited by, or under the authority of, express provisions of this act. Without excluding the exercising of any other powers under, or in any way limiting the generality of, the preceding general grant of power, or in any way excluding or limiting the exercising of any or all other powers granted by this act, the general power granted by this section shall include, and each such commission shall have and in its discretion may exercise, the specific powers provided by this act.

History: En. Sec. 13, Ch. 223, L. 1951.

Off-street public parking facilities. 8 ALR 2d 373.

11-3714. Indenture for security of bonds. The commission may enter into indentures providing for the aggregate principal amount, date, or dates, maturities, interest rate, denominations, form, registration, transfer and interchange of such bonds and coupons, and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture, and is bound thereby. An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include any, or one, or all the following clauses relating to the bonds issued thereunder: Requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture; requiring the commission to make all repairs, renewals and replacements necessary to the operation of the project and to keep it at all times in good repair; requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights; requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds; which limits, restricts, or prohibits any right, power or privilege of the commission to mortgage or otherwise encumber, sell, lease or dispose of any project constructed from the proceeds of the bonds or from other proceeds, or to enter into any lease or agreement which impairs or impedes the operation of such project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues.

Requiring the commission to fix, prescribe and collect fees, tolls, rentals or other charges in connection with the services and facilities furnished from the project acquired, constructed or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses or [of] operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project; requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon, or to any reserve or other fund created for the further protection of the bonds, and to apply such revenues or cause them to be applied only as provided in the indenture.

Limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof, or more than one of such projects; limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing or completing any improvement or any part thereof; requiring, specifying or limiting the kind, amount and character of insurance to be maintained by the commission on any project, or any part thereof, and the use and disposition of the proceeds of any such insurance thereafter collected; providing the events of default, and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

Designating the rights, limitations, powers and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture; prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding. Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission, by any department, political subdivision or agency of the state of Montana, or by any public corporation, municipality, district or political subdivision shall not be counted as outstanding bonds, or be entitled to vote or assent but shall nevertheless, be subject to any such modification or amendment.

History: En. Sec. 14, Ch. 223, L. 1951.

Municipal Corporations⇐923.
64 C.J.S. Municipal Corporations § 1935.

Compiler's Note

The bracketed word "of" was inserted by the compiler.

11-3715. Additional clause in indenture—trustee for bondholders. The indenture may include a clause providing for such other acts and matters as may be necessary or convenient or desirable in order to secure the bonds or to make the bonds more marketable; the commission may designate a bank or trust company as a trustee for the holders of bonds issued hereunder, and may authorize the trustee to act on behalf of the holders of the bonds, and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders, and may fix and determine the conditions upon which any trustee shall receive, hold or disburse any or all revenues collected for or on account of the bondholders. The authority may prescribe the duties and powers of such trustee with respect to the payment of principal and interest on the bonds, the redemption of the bonds, the registration and discharge from registration of the bonds, and the management of any sinking fund or other funds provided as security for the bonds.

History: En. Sec. 15, Ch. 223, L. 1951.

11-3716. Series or divisions of bonds. The commission may issue revenue bonds in series or may divide any issue into one or two or more divisions and fix different maturities or dates of such bonds, different rates of interest, or prescribe different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the commission, at or prior to the issue thereof. The commission may provide for successive issues or may provide for one maximum issue.

History: En. Sec. 16, Ch. 223, L. 1951.

11-3717. Interest on bonds—redemption. Revenue bonds shall bear interest at a rate of not to exceed six (6) per cent per annum, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds the commission may fix limitations or restrictions on the payment of interest. Bonds may be callable upon such terms, conditions, and upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state of Montana in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951.

11-3718. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed or engraved facsimile except the countersignature of the clerk or other officer of the commission designated by the commission which countersignature shall be manually affixed. If any of the officers whose signatures or countersignatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures or countersignatures are

nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: En. Sec. 18, Ch. 223, L. 1951.

11-3719. Maturity dates. Bonds shall bear dates prescribed by the commission. Bonds may be serial bonds or sinking fund bonds with such maturities as the commission may determine. No bond by its terms shall mature in more than forty (40) years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

History: En. Sec. 19, Ch. 223, L. 1951.

11-3720. Sale of bonds—payment of interest—lien of bonds—temporary bonds—tax exemption—legal investments—refunding bonds. The commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The commission may sell bonds at less than their par or face value but no bond may be sold at a price below the par or face value thereof which would result in a sale price yielding to the purchaser an average of more than six (6) per cent per annum, payable semiannually, according to standard tables of bond values. The commission may provide for the security of the bonds. Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction or completion of which the bonds have been issued, and for a period of not to exceed two (2) years thereafter as provided for in the indenture. The commission may provide in the proceedings for the issuance of bonds that the bonds and the interest thereon constitute such lien upon the revenues of any project acquired, constructed or completed from the proceeds thereof as may be provided for in the indenture. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates or receipts of any denomination whatsoever, and with or without coupons, to be exchanged for definitive bonds when ready for delivery. All such revenue bonds, and the interest or income therefrom, are exempt from all taxation in this state, other than gift, inheritance and estate taxes. All bonds issued under this act shall be legal investments for both public and private funds. The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. All provisions of this act applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof.

History: En. Sec. 20, Ch. 223, L. 1951.

11-3721. Funding or refunding bonds—negotiable instruments. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby, and in addition for the payment of all expenses incident to the calling, retiring or paying of such outstanding bonds, and the issuance of such funding or refunding bonds. These expenses include the difference in

amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold, any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement. All bonds issued under the provisions of this act are negotiable instruments, except when registered in the name of a registered owner.

History: En. Sec. 21, Ch. 223, L. 1951.

11-3722. Rates, fees and charges—lien. The commission shall fix the rates, fees, and all other charges to be made for all projects, services or facilities furnished, acquired, constructed or completed under this act for the use thereof by any persons or public or private agencies utilizing such projects, services or facilities. Subject to such contractual obligations as may be entered into by the commission and the holders of the revenue bonds issued under this act, the commission is authorized to change such rates, charges and fees from time to time as conditions warrant. All rates, fees and charges shall be at all times fixed to yield annual revenue which together with other revenue shall be equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges on the revenue bonds at any time issued and outstanding in connection with the project of which such facilities are a part as the same become due. The commission may provide that bond redemption and the interest payment shall constitute a first, direct and exclusive charge and lien on all such fees, and charges and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of the project for the acquisition, construction or completion of which such revenue bonds were issued, and all such fees and charges and other revenues, together with the interest thereon shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid. The commission may provide that the rates, fees and charges established are minimum rates, fees, and charges and subject to increase or decrease in accordance only with the terms of the indenture under which the revenue bonds were issued.

History: En. Sec. 22, Ch. 223, L. 1951.

11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee. Every contract entered into by the commission for the use of any project or the services or facilities thereof, acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued. Every such contract or lease shall also refer to the provisions of this act with respect to the obligation of the commission to fix fees and charges to meet the payments provided for in this act and in the proceedings for the issuance of revenue bonds and all payments

required to be made to the commission under such contract shall be subject to increase if and when the commission is required to increase rates or charges to meet its obligations hereunder and under any indenture providing for the issuance of bonds. An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) (To Compel Performance of Contract.) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this act.

(b) (To Enjoin Unlawful Acts.) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission.

History: En. Sec. 23, Ch. 223, L. 1951.

11-3724. Default—rights of obligees. A commission shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event or default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any parking facility or any part thereof to be surrendered to any such obligee.

(b) To obtain the appointment of a receiver of any parking facility of said commission or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such parking facility or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct.

(c) To require said commission and the members and employees thereof to account as if it and they were the trustees of an express trust.

History: En. Sec. 24, Ch. 223, L. 1951.

11-3725. Property of commission exempt from execution—exception. All real property of a commission shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against a commission be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust or other encumbrance of a commission or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by a commission on its rents, fees, or revenues.

History: En. Sec. 25, Ch. 223, L. 1951.

Separability Clause

Section 26 of Ch. 223, L. 1951 read "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, or the application of such provision to other persons or circumstances, shall not be affected thereby."

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

Section 11-3801. City planning boards or city-county planning boards authorized—purpose of act.
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11-3858. Provisions of county planning and zoning act no longer applicable where master plan adopted.

11-3801. City planning boards or city-county planning boards authorized—purpose of act. The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials, and in addition, that certain regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers be granted legislative bodies of cities and counties to carry out the purposes of this act.

History: En. Sec. 1, Ch. 246, L. 1957.

Title of Act

An act relating to the creation of a city planning board or a city-county planning board; defining the terms; relating to the enactment of city ordinances granting powers to a city planning board or a city-county planning board, and defining the powers thereof; relating to the members of the city planning board or city-county planning board and defining the powers and duties of such members; providing for the adoption by the governing bodies of cities and counties of a master plan for the development of the area within the city or county covered by the master plan of development; providing that the governing bodies of cities and counties may levy a tax not to exceed one-half mill on the property therein for planning board purposes; providing for the increase and decrease in the area covered by a master plan of development; conferring on the planning board the authority to approve or disapprove plats and maps of all subdivisions in the area covered by the master plan; providing for transferring to the planning board authority relating to zoning and building regulation conferred on cities by sections 11-2701 to 11-2709, Revised Codes of Montana, 1947; providing that nothing in the act shall prevent the complete use, development, recovery, and sale of mineral and forest resources within the area covered by a master plan; providing for appeals from decisions of a planning board; containing a severability clause; and repealing all acts inconsistent herewith.

11-3802. Existence and actions of existing boards. Upon the taking effect of this act, a planning board heretofore established shall continue to operate as though authorized under the terms of the present act. All actions lawfully taken under prior acts or ordinances are hereby validated and continued in effect until amended or repealed by action taken under the authority of this act.

History: En. Sec. 2, Ch. 246, L. 1957.

11-3803. Definitions. As used in this act:

1. "City" includes incorporated cities and towns.

2. "City council" means the chief legislative body of a city or incorporated town.

3. "Planning board" means a city planning board or a joint city-county planning board.

4. "Master plan" mean a complete master plan or any of its parts such as master plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and other related matters, and including such ordinances, laws, or resolutions as may be deemed necessary to implement such complete master plan or parts thereof by legislative approval and provision for such regulations as are deemed necessary and their enforcement.

5. "Public place" means any tract owned by the state or its subdivisions.

6. "Mayor" means mayor of a city.

7. "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

8. "Units of government" means any federal, state, regional, county, city, or town.

9. "Utility" means any facility used in rendering service which the public has a right to demand.

10. "Person" means individual, firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

History: En. Sec. 3, Ch. 246, L. 1957.

11-3804. City planning board. A city planning board shall consist on [of] not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, at least two (2) members of which shall be residents of the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act.

History: En. Sec. 4, Ch. 246, L. 1957.

11-3805. Intention of city to create planning board—county to decide whether to create city-county board or permit city board. Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing, the county commissioners of the county in which the city is located of their intention to form a city planning board.

The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within thirty (30)

days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect the planning board so to be formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957.

11-3806. Member of council to serve on city planning board—term—vacancies. As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed, unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957.

11-3807. Appointments—certification. The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: En. Sec. 7, Ch. 246, L. 1957.

11-3808. Citizen members—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act.

History: En. Sec. 8, Ch. 246, L. 1957.

11-3809. Citizen members—term. Upon the creation of a city planning board, the citizen members shall be appointed for the following terms:

One (1) for a term of one (1) year;

One (1) for a term of two (2) years;

One (1) for a term of three (3) years;

One (1) for a term of four (4) years;

The terms shall expire on the first day of January of the first, second, third, and fourth years respectively following their appointment.

Thereafter as the terms expire each new appointment shall be for a term of four (4) years.

History: En. Sec. 9, Ch. 246, L. 1957.

11-3810. City-county planning boards—members—term of officer members. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Three (3) citizen members to be appointed by the board of county commissioners.

The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be four (4) years, except for the term of the first members appointed which will be fixed by agreement and rule of the governing bodies represented on the board for any period of time from one (1) to four (4) years in order to provide for terms with a minimum number of terms expiring in any single year.

History: En. Sec. 10, Ch. 246, L. 1957.

11-3811. Vacancies. Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957.

11-3812. Citizen members of city-county board—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and county. Citizen members shall reside in the areas over which the planning board has jurisdiction, providing, however, that at least two (2) members shall reside in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957.

11-3813. Terms of members—removal of citizen appointee. Terms of the members who are the officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed. The terms of the other members shall be four (4) years, except for the term of the first members appointed, which may be fixed by agreement and rule of the board for any period of time from one (1) to four (4) years in order to provide for staggered terms with a minimum number of terms expiring in any single year.

Provided however, any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: En. Sec. 13, Ch. 246, L. 1957.

11-3814. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the

board of county commissioners of the county wherein the city is located shall within forty-five (45) days designate a representative of the county, which representative may be a member of the board of county commissioners or an office holder or employee of the county, to the mayor of the city for appointment of the city planning board; in the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: En. Sec. 14, Ch. 246, L. 1957.

11-3815. Representation of additional cities, towns, or county on existing boards. Any city, county, or town, or any combination thereof wishing to be represented upon an existing planning board, may by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

The membership of any board may be increased to provide for representation of any additional cities, counties, or towns seeking representation thereon.

History: En. Sec. 15, Ch. 246, L. 1957.

11-3816. Meetings. The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

History: En. Sec. 16, Ch. 246, L. 1957.

11-3817. Special meetings. Special meetings of the planning board may be called by the president or by two (2) members upon written request to the secretary. The secretary shall send to all members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting, or if all members are present at the special meeting.

History: En. Sec. 17, Ch. 246, L. 1957.

11-3818. Quorum—official action. A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957.

11-3819. Members not to receive salary. The members of the planning board shall receive no salary for services on the planning board.

History: En. Sec. 19, Ch. 246, L. 1957.

11-3820. Expenses while attending conferences in another city, county, or state. When the planning board determines that it is necessary for members or employees to attend, in another city, county, or state, a regional or national conference or interview dealing with planning or related problems, the commission may pay the actual expenses of the attending mem-

bers or employee provided the amount has been made available in the board's appropriation.

History: En. Sec. 20, Ch. 246, L. 1957.

11-3821. President and vice-president. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957.

11-3822. Secretary—contracts for services. The board may appoint and prescribe the duties and fix the compensation of a secretary, and such employees as are necessary for the discharge of the duties and responsibilities of the board.

The board may make contracts for special or temporary services and any professional services.

History: En. Sec. 22, Ch. 246, L. 1957.

11-3823. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957.

11-3824. Powers and duties. To effectuate the purpose of this act, the board shall have the power and duty to:

1. Exercise general supervision of and make regulations for the administration of the affairs of the board.
2. Prescribe uniform rules pertaining to investigations and hearings.
3. Supervise the fiscal affairs and responsibilities of the board.
4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board, and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.
5. Keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the board.
6. Make recommendations and an annual report to the mayor and city council and the board of county commissioners of any governmental units represented on the board concerning the operation of the board and the status of planning within its jurisdiction.
7. Prepare, publish, and distribute reports, ordinances and other material relating to the activities authorized under this act.
8. Adopt a seal, and certify to all official acts.
9. Sue and be sued collectively by its legal name, styled according to the city "..... City Planning Board" or "..... City-County Planning Board," service of process being had on the president of the commission; but no costs shall be taxed against the commission or any of its members in any action.
10. Invoke any legal, equitable, or special remedy for the enforcement of the provisions of the act or ordinance or its action taken thereunder.

11. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county government and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

12. If deemed advisable, establish an advisory committee or committees.

History: En. Sec. 24, Ch. 246, L. 1957.

11-3825. Funds for operation—tax levy authority. After a city council has by ordinance or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and shall budget and appropriate the funds necessary for the respective shares thus agreed upon.

The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed one-half mill for planning board purposes.

When a city-county planning board has been established, the board of county commissioners may create a planning and zoning district which shall include only that property within the limits of a master plan or proposed master plan as defined in section 30 [11-3830], located outside the limits of incorporated cities and towns, and the board of county commissioners may levy on all of the property located within such planning district a tax not exceeding one-half mill for planning board purposes.

History: En. Sec. 25, Ch. 246, L. 1957.

11-3826. Authority to expend money. The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this act.

History: En. Sec. 26, Ch. 246, L. 1957.

11-3827. Power to accept gifts and donations—special nonreverting fund. A city or county may accept gifts and donations for planning board purposes. Any moneys so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities of state or local government, or from civic sources and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957.

11-3828. Master plan—policies. So as to assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development, the planning board shall prepare a master plan. Upon the creation of a planning board under the terms of this act and before such time as a master plan has been adopted, as provided in this act, a planning board so created shall serve in an advisory capacity to the local governing bodies establishing a planning board and shall consider and make recommendations to the city or cities or county on all subdivision and convenience plats presented to the city council or board of county commissioners prior to the subdivision or convenience plat receiving final approval for filing by the proper local governmental authority. The city or county shall not be bound by the recommendation but shall give consideration to the recommendations so made. It may also formulate policies for:

1. The development of public ways, public places, public structures, and public and private utilities.

2. The issuance of improvement location permits on platted and unplatted lands.

3. The laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957.

11-3829. Departments and officials to supply information and documents requested in connection with preparation of master plan. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or upon the request of the board shall provide such information as relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957.

11-3830. Master plan—limits. A planning board shall adopt a master plan for the development of the city and such contiguous unincorporated area outside the city as, in the judgment of the board, bears reasonable relation to the development of the city. In order to exercise the rights and privileges of this act over such unincorporated area, the planning board shall file the limits of such area with the county clerk and recorder of the county in which such city is located, and shall revise such limits, as they are altered from time to time by subsequent filings and the limits of such area as so filed and altered from time to time by subsequent filings shall be the limit of the territorial jurisdiction of any city planning board or city-county planning board created under the powers of this act.

In case the unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary shall be determined by the proportion that the incorporated area of one city bears to the incorporated area of the other, and the boundary line as so determined or agreed upon shall be filed as a part of any master plan or plans and shall be the

limit of territorial jurisdiction of each such member city for decisions made by the governing bodies of cities under the authority of this act.

History: En. Sec. 30, Ch. 246, L. 1957.

11-3831. Master plan—contents. A master plan may include:

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:

a. History, population, and physical site conditions;

b. Land use, including the height, area, bulk, location and use of private and public structures and premises;

c. Population densities;

d. Community centers and neighborhood units;

e. Blighted and slum areas;

f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

h. Flood control and prevention;

i. Public and private utilities, including water, light, heat, communication, and other services;

j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;

k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;

l. Parks and recreation, including parks, playgrounds, reservations, forests, wild life refuges, and other public grounds, spaces, and facilities of a recreational nature;

m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

n. Education, including location and extent of schools, colleges, and universities;

o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;

p. Conservation of water, soil, agricultural, and mineral resources;

q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 1 [11-3801] of this act.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of elim-

inating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

History: En. Sec. 31, Ch. 246, L. 1957.

11-3832. Streets and highways—amended or additional plans. After the board has adopted a master plan which includes a major street or highway plan, the board may:

1. Determine lines for new, extended, widened, or narrowed streets or highways in any portion of the city or county within the jurisdiction of the planning board.

2. Certify to the city council or board of county commissioners the amended or additional plan under the same procedure as established for the certification and approval of the original plan.

The making or certification of the amended or additional plan shall not constitute the opening, establishment, or acceptance of land for street or highway purposes.

History: En. Sec. 32, Ch. 246, L. 1957.

11-3833. Notice of hearing prior to adoption of master plan. Prior to the adoption of a master plan, the board shall give notice and hold a public hearing on the plan and a proposed ordinance for its enforcement.

At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the area over which the board has jurisdiction a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957.

11-3834. Resolution adopting master plan and recommending ordinance. After a public hearing has been held, the board may by resolution adopt the master plan and recommend the ordinance, and resolution if a county is represented, to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957.

11-3835. Certifying and presenting plan and ordinance to the governing bodies of governmental units. Upon adoption of the master plan by the planning board and the recommendation of the ordinance and resolution, if any, the secretary shall certify a copy of the plan to the governing bodies of the governmental units represented on the board.

At the first meeting of the governing bodies of the governmental units represented on the board after adoption of the plan the secretary or a member of the board shall present the plan and ordinance to the said governing bodies.

History: En. Sec. 35, Ch. 246, L. 1957.

11-3836. Approval or disapproval of plan or ordinance by governmental unit. Within sixty (60) days after certification of the plan, ordinance, and resolution, if any, to the governing bodies, they shall approve or

disapprove such plans, ordinances, and resolutions, and if approved, such plans shall be in full force and effect from and after the date of approval.

History: En. Sec. 36, Ch. 246, L. 1957.

11-3837. Rejection or amendment by governmental unit. If a city council or board of county commissioners represented on the board rejects the plan and ordinance or amends it, then it shall be returned to the board for its consideration with a written statement of the reasons for its rejection or amendment. When a board has more than one (1) city represented, the right of each city to amend or reject the plan shall be confined to the portion of the plan covering its territorial jurisdiction as defined in section 30 [11-3830] of this act.

The board shall have forty-five (45) days in which to consider the rejection or amendment and report to the governing bodies.

In case the board does not file a report with the objecting or amending governing body within forty-five (45) days, the action in amending or rejecting the ordinance shall become final.

History: En. Sec. 37, Ch. 246, L. 1957.

11-3838. Adoption of plan in whole or in part. The planning board may adopt the master plan as a whole by a single resolution, or may by successive resolutions adopt successive parts of the plan, said parts corresponding to major geographical sections of the plan area or to functional divisions of the subject-matter of the plan. Upon the approval of any segment of the master plan by the governing bodies of the governmental units represented on the board, that segment shall be in force.

History: En. Sec. 38, Ch. 246, L. 1957.

11-3839. Amendments of plan after adoption. After the adoption of a master plan and ordinance, all amendments to it shall be adopted according to the procedure set forth in sections 33 through 37 [11-3833 through 11-3837], except that, if the governing body or bodies desire an amendment the planning board may be directed to prepare an amendment and submit it to said governing body or bodies within sixty (60) days after formal written request.

History: En. Sec. 39, Ch. 246, L. 1957.

11-3840. Public ways, places, buildings, structures, or utilities—water and sewer facilities—policy and pattern of development. After adoption of the master plan and ordinance the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities.

History: En. Sec. 40, Ch. 246, L. 1957.

11-3841. Subdivisions—plats and re-plats. After a master plan and an ordinance containing provisions for subdivision control and the approval of plats and re-plats have been adopted and a certified copy of the ordi-

nance has been filed with the county clerk and recorder, the planning board shall have exclusive control over the approval of all plats involving incorporated and unincorporated lands covered by the master plan and ordinance.

All control over plats granted by other statutes, so far as they are in harmony with the provisions of this act, shall be transferred to the planning board having jurisdiction over the land involved. Existing provisions for platting control, so far as they are inconsistent with the provisions of this act, are hereby repealed.

History: En. Sec. 41, Ch. 246, L. 1957.

11-3842. Plats of subdivisions—approval by planning board. After a master plan and an ordinance, containing provisions for subdivision control and the approval of plats and re-plats, have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, a plat of a subdivision shall not be filed with the county clerk and recorder or the city or town clerk unless it has first been approved by the planning board having jurisdiction over the area as provided in section 41 [11-3841] and section 44 [11-3844].

History: En. Sec. 42, Ch. 246, L. 1957.

11-3843. Application for approval of plat. A person desiring the approval of a plat shall submit a written application for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

Upon receipt of the application, the board, if it tentatively approves the application, shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.

History: En. Sec. 43, Ch. 246, L. 1957.

11-3844. Determination of whether application for approval should be granted. In determining whether an application for approval shall be granted, the board shall determine if the plat provides for:

1. Coordination of subdivision streets with existing and planned streets or highways.
2. Coordination with an extension of facilities included in the master plan.
3. Establishment of minimum width, depth, and area of lots within the projected subdivision.
4. Fair allocations of areas for streets, parks, and utilities.

History: En. Sec. 44, Ch. 246, L. 1957.

11-3845. Regulations governing procedure for application or approval of plats. The planning board shall adopt and publish written regulations governing the procedure for application or approval of plats of the lands within its jurisdiction.

History: En. Sec. 45, Ch. 246, L. 1957.

11-3846. Approval or disapproval of application of plat. After hearing and within forty-five (45) days after application for approval of the plat, the board shall approve or disapprove it. If the board approves, it shall affix the commission's seal upon the plat. If it disapproves, it shall

set forth its reasons in its own records and provide the applicant with a copy.

History: En. Sec. 46, Ch. 246, L. 1957.

11-3847. Fees. The board may establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his application.

History: En. Sec. 47, Ch. 246, L. 1957.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by board. After a master plan and an ordinance containing provisions for subdivision control and the approval of plats and re-plats have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, the filing and recording of a plat involving lands covered by such master plan and ordinance shall be without legal effect unless approved by the board.

History: En. Sec. 48, Ch. 246, L. 1957.

11-3849. Structures to conform to master plan and ordinance. A structure shall not be located and an improvement location permit shall not be issued for a structure on any of the lands lying within the jurisdiction of the board unless the structure and its location conforms to the master plan and ordinance.

History: En. Sec. 49, Ch. 246, L. 1957.

11-3850. Issuance of improvement location permits. The ordinance may designate the official or employee of the city or county who shall have authority to issue improvement location permits within the jurisdiction of the board and in conformance with the master plan and ordinance.

Power is granted by this act to any city having adopted a master plan and ordinance for the issuance and control of improvement location permits on unincorporated areas within the jurisdiction of its board.

History: En. Sec. 50, Ch. 246, L. 1957.

11-3851. Appeals. A decision of the board may be appealed as in other civil cases.

A petition on appeal shall specify the grounds upon which the petition alleges the illegality of the board's action. Such petition must be filed in the district court of the county in which the land is located within thirty (30) days after the date of such decision.

History: En. Sec. 51, Ch. 246, L. 1957.

11-3852. City powers regarding building and zoning regulations. As an integral part of the planning of areas so that the object of this legislation as set out in section 1 [11-3801] of this act may be further accomplished, any city council that is represented on a planning board created under the authority of this act may exercise all of the powers heretofore granted by sections 1 through 9 of chapter 136, Laws of 1929 (sections 11-2701 through 11-2709 R. C. M., 1947) over all lands within its territorial

jurisdiction, as such jurisdiction is set forth in section 30 [11-3830] of this act.

History: En. Sec. 52, Ch. 246, L. 1957.

11-3853. Act not to prevent recovery and use of mineral or forest resources. Nothing in this act shall be deemed to authorize an ordinance, law, rule, or regulation which would prevent the complete use, development, recovery, and sale of any mineral resources or forests by the owner thereof, or the construction of buildings, railroads, or other structures or equipment necessary to the full use, development, recovery, and sale of mineral or forest resources.

History: En. Sec. 53, Ch. 246, L. 1957.

11-3854. Exercise of zoning commission powers and duties. Where a city council is represented on an existing planning board, the duties and powers of the "zoning commission" provided for in section 11-2706 shall be performed by the planning board of which such city is a member.

History: En. Sec. 54, Ch. 246, L. 1957.

11-3855. Validation of prior zoning ordinances, rules and regulations. All zoning ordinances and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect, until amended or repealed by action of the city council of such city taken under the authority of this act. These ordinances shall have the same effect as though previously adopted as a master plan of land use or parts thereof.

History: En. Sec. 55, Ch. 246, L. 1957.

11-3856. Enforcement of act. The governing bodies of any governmental unit or units represented upon a planning board may provide by ordinance or resolution for the enforcement of this act and of any regulation or ordinance made thereunder, and may provide punishment for violation thereof. It is also empowered to provide civil penalties for such violation.

History: En. Sec. 56, Ch. 246, L. 1957.

11-3857. Restraining and mandatory injunctions. The planning board or any designated enforcement officials may institute a suit for injunction in the district court of the county to restrain an individual or a governmental unit from violating the provisions of this act or of an ordinance enacted pursuant to its terms. The planning board or any designated enforcement officials may also institute a suit for a mandatory injunction directing an individual or a governmental unit to remove a structure erected in violation of the provisions of this act or of an ordinance enacted pursuant to its terms. If the planning board or other enforcement official is successful in its suit, the respondent shall bear the costs of the action. No member of a planning board created under the terms of this act shall be liable in damages for performing the duties of a member of the planning board as outlined in this act.

History: En. Sec. 57, Ch. 246, L. 1957.

11-3858. Provisions of county planning and zoning act no longer applicable where master plan adopted. When and if said master plan and zoning provisions created by this act have been finally adopted the provisions of sections 16-4101, 16-4102, 16-4103, 16-4104, 16-4105 and 16-4106, Revised Codes of Montana, 1947, shall be no longer applicable to the area covered by the plan and no further development districts shall be thereafter created within said area and all other acts or parts of acts inconsistent with the provisions of this act are, to the extent of their inconsistency, repealed.

History: En. Sec. 58, Ch. 246, L. 1957.

Separability Clause

Section 59 of Ch. 246, Laws 1957 read: "The provisions of this act are considered severable, and if any provision is found to be unconstitutional, it is the intention of the legislative assembly that the remainder have full force and effect."

REVISED CODES OF MONTANA

VOLUME 2

1957 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 2 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2 THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

Edited by

JOHN W. TRANBERG

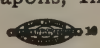
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12-336. Omissions—inaccuracies—effect.

12-335. Adoption of Replacement Volumes 2 and 5 as prima facie laws of Montana—citation. Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947 as published by the publishers and distributors of said Revised Codes of Montana of 1947 are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947 as included in the original compilation of the Revised Codes of Montana of 1947.

History: En. Sec. 1, Ch. 8, L. 1957.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said codes.

12-336. **Omissions — inaccuracies — effect.** Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1957.

Effective Date

Section 3 of Ch. 8, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 9, 1957.

TITLE 13—CONTRACTS

CHAPTER 4—OBJECT

13-404. (7501) When contract wholly void.

References

Cited or applied in Bennett v. Dodgson, — M —, 284 P 2d 990, 995.

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13-705. (7530) Interpretation of written contracts.

Operation and Effect

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded where the chattel mortgage was plain and unambiguous and needed no construction. First Nat. Bank of Plains v. Green Mt. Soil Conservation District, — M —, 293 P 2d 289.

13-706. (7531) Writing—when disregarded.

Operation and Effect

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Cited or applied in Davis v. Burton, — M —, 278 P 2d 213, 218.

13-708. (7533) Several contracts—when taken together.

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Cited or applied in Fey v. A. A. Oil Corporation, — M —, 285 P 2d 578, 583.

13-723. (7548) Time of performance of contract.

Operation and Effect

That no definite time was stipulated for performance by the purchaser of the payment of money is immaterial for our law implies an agreement here to perform within a reasonable time. Bennett v. Dodgson, — M —, 284 P 2d 990, 994.

CHAPTER 8—UNLAWFUL CONTRACTS

13-801. (7553) What is unlawful.

Operation and Effect

A resolution of the board of county commissioners which extinguished the assessed tax of a taxpayer was void as such boards have no power, authority or jurisdiction under the constitution nor statutes to reduce, compromise, remit, release, cancel, diminish or extinguish any state tax, obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined and fixed by the state board of equalization. Likewise, the direction of the board directing the county attorney to stipulate with the attorneys for the taxpayer, to request the court to enter judgment against the county and state was and is wholly void and of no legality whatever. Such void act, understanding and agreement by public officials, void in its inception, is not validated by performance and remains a void act or agreement under the public policy established by the legislature. Carlson v. Flathead County, — M —, 293 P 2d 279, 284. (Dissenting opinion, — M —, 293 P 2d 279, 286.)

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13-907. (7569) Written contracts—how modified.

Operation and Effect

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded, where the chattel mortgage was plain and unambiguous and needed no construction. First Nat. Bank of Plains v. Green Mt. Soil Conservation District, — M —, 293 P 2d 289.

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CHAPTER 5—RURAL ELECTRIC AND TELEPHONE COOPERATIVE ACT

Section 14-501. Act, how cited.
14-502. Purpose.
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14-508. Members.
14-510. Voting districts.
14-516. Conversion of existing corporations.
14-528. Exemption from excise taxes—license fee.
14-530. Definitions.

14-501. Act, how cited. This act may be cited as the "rural electric and telephone cooperative act."

History: En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "and telephone" to the name of this act.

14-502. Purpose. Cooperative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, in which electrical current and service are not otherwise available, from existing facilities and plants;

(b) For the purpose of making generally available in rural areas adequate telephone service through the improvement and expansion of existing telephone facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of rural users thereof, provided that nonduplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "cooperatives."

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957.

Amendment

The 1957 amendment subdivided this section into (a) and (b) subdivisions; inserted the words "for the following purposes" at the end of the introduction; in subd. (a) substituted "are" for "is"; added subd. (b), and began a new paragraph with the word "Corporations."

14-503. Powers. A cooperative shall have power:

(a) To sue and be sued, in its corporate name;

(b) To have perpetual existence;

(c) To adopt a corporate seal and alter the same at pleasure;

(d) To become a member in one or more other cooperatives or corporations or to own stock therein;

(e) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell,

assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities), as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(f) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights of way and easements;

(g) To borrow money and otherwise contract indebtedness, and to issue notes, bonds and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

(h) To construct, maintain and operate electric transmission and distribution lines, or telephone lines, facilities or systems, along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly-owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;

(i) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;

(j) To conduct its business and exercise any or all of its powers within or without this state;

(k) To adopt, amend and repeal by-laws;

(l) In the case of corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members;

(2) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electrical and plumbing fixtures, appliances, apparatus and equipment, and to accept, or otherwise

acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(3) To make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants.

(m) In the case of corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To improve and expand existing telephone lines, facilities and systems in rural areas and to construct, acquire, operate and furnish such additional telephone lines, facilities, and systems, as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof, provided that no duplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

(2) To make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises for telephone service, and installing therein telephone fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such telephone fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(n) To do and perform any and all other acts and things, and to have any [and] exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957.

Compiler's Note

The bracketed word "and" in subd. (n) was inserted by the compiler.

Amendment

The 1957 amendment re-subdivided and rewrote this section. For section prior to amendment see parent volume.

14-504. Name. The name of each cooperative shall include the words "electric" or "telephone" and "cooperative," and the abbreviation "Inc.," provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this act.

History: En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone" both times they appear in this section.

14-508. Members. (a) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The by-laws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership.

(b) An annual meeting of the members shall be held at such time as shall be provided in the by-laws.

(c) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per centum (10%) of the members, or by the president.

(d) Meetings of members shall be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(e) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten (10) nor more than twenty-five (25) days before the date of the meeting.

(f) Five per centum (5%) of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members, but the by-laws may prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(g) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as proxy for more than three (3) members at any meeting of the members.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone service" each time they appear in subd. (a) and in the last sentence of said subdivision substituted the word "to" for "of."

14-510. Voting districts. Notwithstanding any other provisions of this act, the by-laws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by the members residing therein, or (3) both such trustees and delegates shall be elected by such members. In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone service" and substituted the word "to" for "of" which appeared between the words "respect" and "each" in the first sentence.

14-516. Conversion of existing corporations. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this act with the same effect as if originally organized under this act by complying with the following requirements:

(a) The proposition for the conversion of such corporation into a cooperative under this act and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of the corporation prior to its conversion into a cooperative under this act; (2) the address of the principal office of such corporation; (3) the date of the filing of its articles of incorporation in the office of the secretary of state; (4) the statute or statutes under which such corporation was organized; (5) the name assumed by such corporation; (6) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this act; (7) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and (8) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs;

(b) The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion, with such amendments thereto as the

members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(c) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative under this act and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this act; and

(d) The term "articles of incorporation" as used in this act shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957.

Amendment

The 1957 amendment in the first paragraph inserted the words "or telephone service"; deleted the words "be converted into a cooperative and" which appeared between the words "may" and "become" and inserted the words "under this act" each time they appear in subds. (a), (b) and (c).

14-528. Exemption from excise taxes—license fee. Cooperatives and foreign corporations, transacting business in this state pursuant to the provisions of this act, shall pay annually, on or before the first day of July, to the secretary of state, a fee of ten dollars ($10.00) for each one hundred (100) persons or fractions thereof to whom electricity or telephone service is supplied within the state, but shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone service."

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto; "rural area" as applied to all corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries

of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic; and

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

History: En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957.

Amendment

The 1957 amendment made substantial changes in subd. (a). Prior to this amendment it read "(a) 'Rural area' means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto."

Repealing Clause

Section 10 of Ch. 80, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 80, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 2, 1957.

TITLE 15—CORPORATIONS

CHAPTER 11—DISSOLUTION OF CORPORATIONS BY QUO WARRANTO —BY DECREE OF COURT—BY ACT OF DIRECTORS AND BY OTHER METHODS

15-1102. (6011) Winding up the affiairs of and disposing of property, etc.

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Individuals cannot maintain an action for a corporation on the theory that they are the possible successors to the corporation's title upon the expiration of the corporate life. Malcom v. Stondall Land & Investment Co., — M —, 284 P 2d 258, 261.

TITLE 16—COUNTIES

Chapter 9. County commissioners—organization—meetings—compensation, 16-912.
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CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

Section 16-912. Compensation of members of board.

16-912. (4464) **Compensation of members of board.** Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

First class	$5,000.00
Second class	$4,900.00
Third class	$4,800.00
Fourth class	$4,700.00

Each member of the board of county commissioners in all other counties is entitled to fifteen dollars ($15.00) per day for each day's attendance on the sessions of the board, and seven cents (7¢) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties, and no other compensation must be allowed.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957.

Amendment

The 1957 amendment added the first paragraph with classifications first through fourth, in the second paragraph inserted the words "in all other counties" and substituted "fifteen dollars ($15.00)" for "twelve dollars ($12.00)."

Repealing Clause.

Section 2 of Ch. 238, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1008A. Erection and management of county buildings and other improvements.
16-1009. Sale of property.
16-1015. Taxation.

16-1008A. (4465.8) **Erection and management of county buildings and other improvements.** The board of county commissioners has jurisdic-

tion and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power in their discretion to create a commission for the management of such civic center, youth center, park buildings, museums, recreation centers, hospitals, or any combination of two or more thereof. Such commission shall be composed of the senior district court judge of the county, chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above named buildings are situated, and the mayor of the city in such district, and five (5) lay members to be appointed by the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above named buildings are situated, and the mayor of the city in such district, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission, together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957. See history of Sec. 16-1001.

Amendment

The 1957 amendment in the third paragraph deleted the words "and which has been, or may be, leased, as provided by section 16-1032," which appeared in the second sentence immediately following the words "provisions of this act" and also deleted a former last paragraph which read "Nothing herein contained shall be construed as amending or repealing sections 16-1163 to 16-1165."

Repealing Clause.

Section 2 of Ch. 76, Laws 1957 repealed all acts and parts of acts in conflict therewith.

16-1009. (4465.9) **Sale of property.** (1) The board of county commissioners of the several counties in this state shall have the power to

sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred ($100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred ($100.00) dollars, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equipment, as provided in section 16-1803, Revised Codes of Montana, 1947, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) The board of county commissioners shall have the power to sell any property, real or personal, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, to the school district directly for its appraised value which shall represent a fair market value of such property without the necessity of a public auction. If the property to be sold to the school district is reasonably of a value in excess of one hundred ($100.00) dollars, notice of the sale shall be given by publication in a newspaper in said county, notice to be published once a week for four (4) successive weeks and posted in five (5) public places in the county.

(3) Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property re-appraised. Upon such application the district judge shall appoint for such purpose three (3) disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or re-appraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five dollars ($5.00) per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within three (3) months prior to the date of the sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety per cent (90%) of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred dollars ($100.00), sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five (5) public places in the county at least five (5) days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(5) Provided, however, if within one (1) year no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

(6) The funds derived from the sale in the discretion of the board of county commissioners may be credited to a construction reserve account and thereafter used for capital outlay for present or future construction of or an addition to a courthouse, or county jail or county hospital.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957. See history of Sec. 16-1001.

Amendment

The 1957 amendment inserted new subds. (2) and (6) and renumbered former subds. (2) to (4) as (3) to (5) and in the last sentence of subd. (3) inserted the words "or to any school district without public auction."

Repealing Clause

Section 2 of Ch. 110, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 110, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

16-1015. (4465.12) **Taxation.** The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills on each dollar of the taxable valuation for any one (1) year and to levy such taxes as are required to be levied by special or local statutes. Provided, however, that on and after July 1, 1957, and extending to June 30th, 1959, the board of county commissioners is authorized in its discretion to levy not to exceed twenty (20) mills on each dollar of the taxable valuation for any one (1) year.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957. See history of Sec. 16-1001.

Amendment

The 1957 amendment substituted "July 1, 1957" for "July 1, 1955" and "June 30th, 1959" for "June 30th, 1957."

Repealing Clause

Section 2 of Ch. 48, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1180. Minimum standards for electrical equipment installation—permits.
16-1181. When act not applicable—specific exclusions.

16-1180. Minimum standards for electrical equipment installation—permits. The board of county commissioners of counties are hereby authorized, in their discretion:

(a) To establish by resolution suitable minimum standards for the installation of all electrical equipment, which standards, so far as practicable, shall conform to the National Board of Fire Underwriters Electrical Code, or the Rural Electrical Association wiring standards.

(b) To provide for the issuance of permits as a prerequisite to the erection, construction, reconstruction, alteration, or enlargement of any new or existing installation and for the inspection of such installation, and to establish and collect reasonable fees therefore, which fees shall be in such amount as to cover the costs of such permit and inspection. The fees so collected are to go to the general fund of the county.

History: En. Sec. 1, Ch. 49, L. 1957.

Title of Act

An act authorizing counties to establish minimum standards for the installation of electrical equipment; providing for issuance of permits for such installation; providing for the inspection of same; and providing for exclusions herefrom; and providing for a repealing clause.

16-1181. When act not applicable—specific exclusions. This act shall not apply when there is in effect supervised inspection according to the Electrical Code of the National Board of Fire Underwriters or the Rural Electrical Association wiring standards and there is hereby specifically excluded herefrom, the following installations or use of any electrical equipment:

(a) Installations or use in mines, mills or smelters, oil refineries, ships and railway cars, or to automotive equipment.

(b) Installations or use by electricity supply companies or communication agencies in the generation, transmission or distribution of electricity or for the operation of signals or the transmission of intelligence, or to television or radio installations; and

(c) Installations or use by a railway utility in the exercise of its functions as a utility.

(d) Any farm or ranch structure or building situated on a tract of land in excess of five (5) acres.

This act shall not be construed to prohibit the installation of the electrical equipment by the owner of the property.

History: En. Sec. 2, Ch. 49, L. 1957.

Repealing Clause

Section 3 of Ch. 49, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 12—COUNTY PRINTING—COMMISSIONERS TO CONTRACT FOR

Section 16-1203. Envelopes.
16-1204. Letterheads.
16-1205. Legal blanks.
16-1208. Tax receipts in quintuple and more or less copies.
16-1210. Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.
16-1212. Special ruled and printed forms.
16-1213. Bound books.
16-1214. Size 18 x 11½ record books only.
16-1217. Stock forms without county name.
16-1219. Bids, how made—other prices.

16-1203. Envelopes.

	500	1000	Add'l. 1000
White Wove 6¾-24 Grade 400	$ 9.45	$13.50	$ 7.75
6¾-28 Grade 450	9.75	14.10	8.40
10-24 Grade 600	10.70	16.05	10.35
10-28 Grade 700	11.35	17.35	11.60
White Bond 6¾-20 Grade 400	9.45	13.50	7.75
10-20 Grade 600	10.70	16.05	10.35
Manila or Kraft			
6¾-20 Grade 400	8.80	12.20	6.80
10-28 Grade 700	10.10	14.75	9.40
12-28 Grade 1000	11.35	17.35	11.95

History: En. Sec. 3, Ch. 118, L. 1937; amd. Sec. 1, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 1, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all grades and price listings. For section prior to amendment see parent volume.

16-1204. Letterheads.

	250	500	1000	Add'l. 1000
8½ x 7-16 or 20, Grade 35	$10.25	$12.05	$15.10	$ 6.25
8½ x 7-16 or 20, Grade 60	10.75	13.10	17.15	8.15
8½ x 11-16 or 20, Grade 35	11.25	13.15	16.95	7.40
8½ x 11-16 or 20, Grade 60	12.50	14.75	20.20	10.00

History: En. Sec. 4, Ch. 118, L. 1937; amd. Sec. 2, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 2, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all grades and price listings. For section prior to amendment see parent volume.

16-1205. Legal blanks.

	250	500	1000	Add'l. 1000
7 x 8½, printed one side	$11.00	$12.95	$16.20	$ 8.55
7 x 8½, printed two sides	17.00	19.30	23.10	9.10
8½ x 14, printed one side	16.40	19.15	24.10	10.00
8½ x 14, printed two sides	22.90	26.05	31.60	11.10
8½ x 28, printed one side	33.30	38.20	47.60	18.75
8½ x 28, printed two sides	44.40	49.60	59.20	22.20

History: En. Sec. 5, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 3, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised the price listings. For section prior to amendment see parent volume.

16-1208. Tax receipts in quintuple and more or less copies. Perforated, gathered, numbered, different color paper for each sheet, bound in books of 50 sets each complete.

	500 or Less	1000	2000	3000	Add'l. 1000
Size 8½ x 11	$57.65	$85.20	$141.75	$194.25	$55.10
If additional sheet, add	4.15	7.55	13.05	18.55	5.50
Add for extra color	3.40	7.65	10.00	13.40	3.40
If statement printed on other side add	5.05	9.65	13.05	16.50	3.40
Size 9¼ x 11⅞ or 8½ x 14	67.20	98.00	160.10	221.60	61.60
If additional sheet add	5.50	8.90	14.40	20.60	6.55
Add for extra color	4.15	7.20	10.65	14.05	3.40
If statement printed on other side add	6.90	10.35	13.75	17.15	3.40
Size 10¾ x 16¾ or 11 x 17	87.90	125.45	202.60	277.90	75.30
If additional sheet add	7.20	11.60	18.15	27.25	8.15
Add for extra color	4.85	7.90	11.35	14.20	4.15
If statement printed on back add	7.60	11.00	13.85	17.85	4.15

To ascertain price on more than five (5) copies (quintuple) add for each additional sheet: for less than five (5) copies, deduct for each sheet at rate set forth above for sizes specified.

History: En. Sec. 8, Ch. 118, L. 1937; amd. Sec. 5, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 4, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1210. Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.

	500	1000	2000	3000	Add'l. 1000
Envelopes	$ 6.85	$ 8.35	$11.25	$14.10	$ 3.85
Post Cards, 1 side printed	7.65	9.55	13.45	17.35	3.75
Both sides printed	13.25	17.30	24.70	32.10	7.25

History: En Sec. 10, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 5, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1212. Special ruled and printed forms. Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or rule and printed one side only. Prices include punching for loose leaf holders with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add one dollar and fifty cents ($1.50) for each guide line.

8½ x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 37.35	$ 44.05	$ 55.75	$ 19.40
Grade 60-32 Sub.	37.65	44.75	57.10	22.55
Grade 110-36 Sub.	40.45	50.45	68.35	33.85
Deduct if both sides alike	6.05	5.95	5.80	.30
Deduct if printed and ruled, 1 side only	9.35	10.30	12.10	3.00

8½ x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 43.45	$ 50.75	$ 63.95	$ 24.00
Grade 60-32 Sub.	43.90	51.55	65.60	25.80
Grade 110-36 Sub.	47.40	58.80	79.85	40.10
Deduct if both sides ruled and printed alike	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only	11.20	12.10	13.90	3.35

9¼ x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 48.30	$ 57.20	$ 73.30	$ 31.70
Grade 60-32 Sub.	48.95	58.35	75.70	31.15
Grade 110-36 Sub.	54.10	68.35	95.40	53.05
Deduct if both sides ruled and printed alike	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only	11.20	12.10	13.90	3.35

9½ x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 39.30	$ 46.60	$ 59.80	$ 23.40
Grade 60-32 Sub.	39.65	47.45	61.50	25.00
Grade 110-36 Sub.	43.15	54.35	75.25	38.90
Deduct if both sides ruled and printed alike	6.65	6.55	6.40	.30
Deduct if ruled and printed, 1 side only	9.70	10.60	12.40	3.00

9½ x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 66.00	$ 77.75	$100.75	$ 41.70
Grade 60-32 Sub.	66.85	79.50	102.70	45.05
Grade 110-36 Sub.	73.80	93.25	130.20	72.60
Deduct if both sides ruled and printed alike	13.70	13.45	13.20	.30
Deduct if ruled and printed, 1 side only	16.70	17.90	20.30	6.70

10½ x 16 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 53.40	$ 63.25	$ 81.10	$ 33.25
Grade 60-32 Sub.	54.15	64.40	83.60	35.75
Grade 110-36 Sub.	59.30	74.60	103.80	52.25
Deduct if both sides ruled and printed alike	10.60	10.50	10.30	.60
Deduct if ruled and printed, 1 side only	13.00	14.20	16.40	3.30

11 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 46.40	$ 55.35	$ 71.40	$ 31.60
Grade 60-32 Sub.	57.05	56.55	73.90	33.90
Grade 110-36 Sub.	52.15	66.50	93.55	53.00
Deduct if both sides ruled and printed alike	8.20	8.10	7.20	.30
Deduct if ruled and printed, 1 side only	9.70	10.60	12.40	3.35

11 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 56.05	$ 66.00	$ 84.90	$ 31.10
Grade 60-32 Sub.	56.80	67.40	87.75	38.20
Grade 110-36 Sub.	62.30	78.60	110.20	60.60
Deduct if both sides ruled and printed alike	11.30	11.15	11.00	.60
Deduct if ruled and printed, 1 side only	13.70	14.90	17.00	3.65

11¼ x 24½ TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 74.40	$ 88.00	$113.30	$ 46.40
Grade 60-32 Sub.	75.55	90.10	117.50	50.55
Grade 110-36 Sub.	83.95	107.00	151.20	84.25
Deduct if both sides ruled and printed alike	15.20	15.00	14.75	.60
Deduct if ruled and printed, 1 side only	17.90	19.40	21.85	3.65

12 x 9½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 37.95	$ 45.25	$ 58.40	$ 23.50
Grade 60-32 Sub.	38.30	46.10	60.15	25.20
Grade 110-36 Sub.	41.55	53.00	73.90	38.95
Deduct if both sides ruled and printed alike	6.40	6.30	6.20	.30
Deduct if ruled and printed, 1 side only	9.45	10.30	12.10	3.05

12 x 19 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 62.70	$ 74.55	$ 96.10	$ 39.90
Grade 60-32 Sub.	63.60	76.20	99.45	43.30
Grade 110-36 Sub.	70.50	89.95	127.00	70.80
Deduct if both sides ruled and printed alike	13.10	12.90	12.60	.30
Deduct if ruled and printed, 1 side only	16.10	17.30	19.70	3.35

12 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 73.45	$ 87.00	$112.00	$ 46.00
Grade 60-32 Sub.	74.60	89.20	116.25	50.20
Grade 110-36 Sub.	83.05	97.40	149.65	83.60
Deduct if both sides ruled and printed alike	14.95	14.75	14.50	.60
Deduct if ruled and printed, 1 side only	17.30	18.80	21.25	3.65

12 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 94.75	$113.50	$146.10	$ 60.60
Grade 60-32 Sub.	96.00	116.00	151.20	65.90
Grade 110-36 Sub.	106.45	136.90	193.05	107.60
Deduct if both sides ruled and printed alike	23.10	22.90	22.70	.60
Deduct if ruled and printed, 1 side only	24.10	25.45	28.80	5.70

14 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 61.65	$ 72.30	$ 94.80	$ 40.05
Grade 60-32 Sub.	62.40	74.90	98.30	43.65
Grade 110-36 Sub.	69.75	89.25	127.15	72.10
Deduct if both sides ruled and printed alike	12.80	12.60	12.35	.30
Deduct if ruled and printed, 1 side only	14.65	16.10	18.50	3.35

14 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 77.50	$ 92.20	$119.95	$ 53.75
Grade 60-32 Sub.	78.85	94.60	124.90	58.65
Grade 110-36 Sub.	88.50	114.10	163.60	97.35
Deduct if both sides ruled and printed alike	18.00	17.90	17.65	.60
Deduct if ruled and printed, 1 side only	19.45	21.30	24.00	4.50

14 x 34 TOTAL OF 20 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$111.75	$131.90	$170.35	$ 74.85
Grade 60-32 Sub.	113.55	135.45	177.45	81.80
Grade 110-36 Sub.	127.95	163.90	234.40	138.85
Deduct if both sides ruled and printed alike	26.70	26.50	26.30	.60
Deduct if ruled and printed, 1 side only	28.50	30.30	33.60	5.75

17 x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 51.25	$ 60.50	$ 79.30	$ 34.95
Grade 60-32 Sub.	52.10	62.30	82.10	37.75
Grade 110-36 Sub.	57.60	73.45	104.55	60.20
Deduct if both sides ruled and printed alike	10.70	10.55	10.40	.30
Deduct if ruled and printed, 1 side only	12.40	13.60	15.80	3.30

17 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 57.90	$ 69.40	$ 90.50	$ 39.70
Grade 60-32 Sub.	58.70	71.05	94.00	43.30
Grade 110-36 Sub.	65.90	84.85	122.85	71.70
Deduct if both sides ruled and printed alike	12.50	12.30	12.05	.30
Deduct if ruled and printed, 1 side only	13.70	14.90	17.30	3.35

17 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 81.90	$ 97.80	$128.25	$ 59.00
Grade 60-32 Sub.	83.30	100.70	133.90	64.60
Grade 110-36 Sub.	94.60	123.15	178.80	119.50
Deduct if both sides ruled and printed alike	18.85	18.70	18.55	.60
Deduct if ruled and printed, 1 side only	21.25	23.05	25.80	4.50

17 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$102.00	$123.85	$162.85	$ 74.20
Grade 60-32 Sub.	103.65	127.40	169.95	81.15
Grade 110-36 Sub.	118.05	155.85	226.90	138.20
Deduct if both sides ruled and printed alike	24.30	24.10	23.90	.60
Deduct if ruled and printed, 1 side only	26.10	27.90	31.20	5.75

17 x 46 TOTAL OF 28 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$161.90	$202.05	$269.40	$119.65
Grade 60-32 Sub.	164.65	207.85	277.70	131.05
Grade 110-36 Sub.	188.80	254.25	371.40	224.05
Deduct if both sides ruled and printed alike	40.75	40.30	39.85	.90
Deduct if ruled and printed, 1 side only	40.60	42.40	47.40	9.40

18 x 11½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 56.50	$ 67.70	$ 87.90	$ 37.45
Grade 60-32 Sub.	52.30	69.25	91.05	40.60
Grade 110-36 Sub.	68.00	81.75	115.95	65.40
Deduct if both sides ruled and printed alike	11.60	11.40	11.05	.30
Deduct if ruled and printed, 1 side only	14.00	15.50	17.30	3.35

18 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 94.45	$114.85	$150.90	$ 67.70
Grade 60-32 Sub.	95.90	118.00	157.30	73.85
Grade 110-36 Sub.	108.45	142.90	207.10	123.85
Deduct if both sides ruled and printed alike	23.70	23.50	23.30	.60
Deduct if ruled and printed, 1 side only	24.90	26.70	30.00	5.75

18 x 46 TOTAL OF 32 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$170.30	$209.10	$276.60	$127.95
Grade 60-32 Sub.	173.50	215.30	289.90	140.70
Grade 110-36 Sub.	198.00	264.70	389.25	240.55
Deduct if both sides ruled and printed alike	47.70	47.60	47.50	1.20
Deduct if ruled and printed, 1 side only	46.70	48.80	55.50	10.75

19 x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 59.00	$ 70.70	$ 94.60	$ 39.90
Grade 60-32 Sub.	59.85	72.40	95.55	43.30
Grade 110-36 Sub.	66.75	86.20	123.15	70.80
Deduct if both sides ruled and printed alike	11.90	11.70	11.35	.30
Deduct if ruled and printed, 1 side only	14.60	16.10	17.90	3.35

19 x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 99.60	$121.10	$159.45	$ 72.15
Grade 60-32 Sub.	101.30	124.50	166.20	78.90
Grade 110-36 Sub.	115.10	152.00	221.20	133.65
Deduct if both sides ruled and printed alike	24.00	23.80	23.60	.60
Deduct if ruled and printed, 1 side only	25.50	27.30	30.60	5.75

20 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$ 68.85	$ 82.40	$108.15	$ 48.00
Grade 60-32 Sub.	69.85	84.50	112.35	53.35
Grade 110-36 Sub.	78.10	101.50	146.05	87.10
Deduct if both sides ruled and printed alike	16.15	16.00	15.85	.30
Deduct if ruled and printed, 1 side only	16.40	17.00	19.70	4.55

20 x 28 TOTAL OF 18 COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	$114.85	$137.10	$180.70	$ 83.85
Grade 60-32 Sub.	116.95	141.40	189.45	92.20
Grade 110-36 Sub.	133.90	175.05	256.45	159.55
Deduct if both sides ruled and printed alike	26.10	25.90	25.70	.60
Deduct if ruled and printed, 1 side only	27.30	29.10	32.40	5.75

History: En. Sec. 12, Ch. 118, L. 1937; amd. Sec. 8, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 6, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised grade and price listings. For section prior to amendment see parent volume.

16-1213. Bound books.

Bound books, ruled, printed and paged on 36 Sub. No. 1, 100% rag ledger. Patent back, flat opening. Complete, including lettering back or side title.

The first dimension listed is the binding margin. When greater or intermediate lengths of sheets are furnished with a binding size as listed, the difference between two given lengths is added or subtracted in the correct proportion to either of the given lengths to cover the length of sheet actually furnished. When an intermediate binding size is furnished, the next larger binding size shall be used.

SIZE 10½ x 16—7 UNIT COLUMNS TO PAGE
Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 82.55	$ 88.65	$ 95.05	$ 97.95	$104.40
¾ Russia, Printed Page	92.15	98.15	104.15	105.05	114.00
Full Russia, Printed Head	95.30	101.35	107.75	111.60	117.25
Full Russia, Printed Page	104.95	110.90	117.45	121.30	126.80

Add for folio printed head $11.20
Add for folio printed page $20.75
Add for each printed guide line $1.95
Add for index ruled $8.85
Add for index through book $3.40

SIZE 11½ x 18—8 UNIT COLUMNS TO PAGE
Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 89.95	$ 96.00	$102.65	$106.15	$112.20
¾ Russia, Printed Page	101.65	107.75	114.25	117.85	123.90
Full Russia, Printed Head	102.20	108.15	114.60	118.45	123.95
Full Russia, Printed Page	113.85	119.85	126.20	130.15	134.30

Add for folio printed head $11.70
Add for folio printed page $23.35
Add for each printed guide line $1.95
Add for index ruled $8.85
Add for index through book $3.55

SIZE 12 x 19 OR 14 x 17—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 92.35	$ 98.60	$105.15	$108.75	$114.75
¾ Russia, Printed Page	105.55	111.80	118.30	121.95	128.00
Full Russia, Printed Head	104.75	111.10	117.65	121.60	127.25
Full Russia, Printed Page	117.90	124.15	130.80	134.80	140.40

Add for folio printed head $12.15
Add for folio printed page $25.35
Add for each printed guide line $1.95
Add for index ruled $8.85
Add for index through book $3.55

SIZE 14 x 8½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 75.65	$ 81.55	$ 88.45	$ 91.70	$ 97.65
¾ Russia, Printed Page	89.35	95.20	102.10	105.45	111.15
Full Russia, Printed Head	85.55	91.30	98.15	101.70	107.20
Full Russia, Printed Page	101.90	105.05	111.85	115.45	121.50

Add for folio printed head $8.60
Add for folio printed page $22.75
Add for each printed guide line $1.95
Add for index ruled $8.85
Add for index through book $3.40

SIZE 14 x 20—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 96.65	$103.10	$110.65	$113.90	$120.90
¾ Russia, Printed Page	111.85	118.30	125.85	129.10	136.10
Full Russia, Printed Head	111.15	117.45	124.75	128.75	134.60
Full Russia, Printed Page	126.25	132.60	139.95	143.85	149.90

Add for folio printed head $12.60
Add for folio printed page $27.95
Add for each printed guide line $1.95
Add for index ruled $9.35
Add for index through book $3.55

SIZE 16 x 10½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 89.10	$ 91.90	$100.65	$104.50	$108.15
¾ Russia, Printed Page	99.40	107.20	115.95	119.85	127.60
Full Russia, Printed Head	96.70	104.45	113.15	118.45	124.75
Full Russia, Printed Page	111.95	119.65	128.35	133.70	139.95

Add for folio printed head $10.60
Add for folio printed page $25.85
Add for each printed guide line $1.95
Add for index ruled $9.35
Add for index through book $3.55

SIZE 16 x 21—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$113.10	$123.25	$134.30	$139.50	$150.55
¾ Russia, Printed Page	131.35	141.50	152.55	157.70	168.80
Full Russia, Printed Head	130.60	140.65	151.70	159.75	167.70
Full Russia, Printed Page	148.85	158.85	169.90	177.95	185.95

Add for folio printed head $13.20
Add for folio printed page $31.45
Add for each printed guide line $1.95
Add for index ruled $9.80
Add for index through book $3.75

SIZE 17 x 14 OR 19 x 12—6 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 91.95	$ 99.85	$108.80	$112.75	$121.70
¾ Russia, Printed Page	110.25	118.10	127.05	131.05	139.95
Full Russia, Printed Head	104.20	112.10	121.00	127.60	133.90
Full Russia, Printed Page	122.45	123.85	139.30	145.85	152.15

Add for folio printed head $11.70
Add for folio printed page $30.10
Add for each printed guide line $1.95
Add for index ruled $9.35
Add for index through book $3.55

SIZE 17 x 28—10 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$135.40	$146.30	$158.30	$163.80	$171.70
¾ Russia, Printed Page	157.70	168.60	180.55	186.10	198.00
Full Russia, Printed Head	154.50	165.25	177.45	186.15	194.95
Full Russia, Printed Page	176.80	187.85	199.75	208.50	217.20

Add for folio printed head $14.15
Add for folio printed page $36.55
Add for each printed guide line $1.95
Add for index ruled $9.80
Add for index through book $4.00

SIZE 18 x 11½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$ 90.15	$ 98.00	$107.00	$110.45	$124.95
¾ Russia, Printed Page	107.90	115.85	124.40	128.20	137.55
Full Russia, Printed Head	102.10	109.90	118.65	124.95	131.15
Full Russia, Printed Page	119.90	127.65	136.35	142.70	149.00

Add for folio printed head $11.15
Add for folio printed page $28.85
Add for each printed guide line $1.95
Add for index ruled $9.35
Add for index through book $3.35

SIZE 18 x 23—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$122.45	$132.85	$144.75	$149.40	$160.70
¾ Russia, Printed Page	144.00	154.40	165.70	170.80	182.20
Full Russia, Printed Head	141.85	152.10	163.50	171.65	179.80
Full Russia, Printed Page	164.60	173.60	184.95	193.10	201.25

Add for folio printed head $13.70
Add for folio printed page $34.95
Add for each printed guide line $1.95
Add for index ruled $9.80
Add for index through book $3.90

SIZE 19 x 24—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$127.25	$137.75	$149.25	$154.40	$165.60
¾ Russia, Printed Page	150.00	160.55	172.00	177.80	162.50
Full Russia, Printed Head	146.50	157.10	170.55	177.60	185.20
Full Russia, Printed Page	169.35	179.80	191.35	199.70	207.95

Add for folio printed head $14.70
Add for folio printed page $37.50
Add for each printed guide line $1.95
Add for index ruled $9.80
Add for index through book $4.00

SIZE 21 x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$108.40	$118.30	$129.35	$134.25	$145.20
¾ Russia, Printed Page	130.20	140.15	151.05	156.05	167.00
Full Russia, Printed Head	125.85	135.60	146.25	154.10	161.90
Full Russia, Printed Page	147.55	157.45	168.15	175.95	183.75

Add for folio printed head $12.60
Add for folio printed page $34.45
Add for each printed guide line $1.95
Add for index ruled $10.40
Add for index through book $4.05

SIZE 28 x 17—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	$124.00	$134.30	$146.25	$150.25	$161.45
¾ Russia, Printed Page	154.45	164.70	176.65	180.75	191.90
Full Russia, Printed Head	143.20	153.65	165.50	170.15	181.80
Full Russia, Printed Page	173.60	184.10	195.90	200.60	212.20

Add for folio printed head $13.20
Add for folio printed page $43.70
Add for each printed guide line $1.95
Add for index ruled $10.85
Add for index through book $4.00

History: En. Sec. 13, Ch. 118, L. 1937; amd. Sec. 9, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 7, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1214. Size 18 x 11½ record books only.

Loose Leaf Style With Binder

No. Pages	560	640
Marginal record ruled stock form grade 110, 36 Sub.		
Full Russia stock ruled not printed	$64.20	$68.20
Full Russia, Printed Head	71.80	76.05
Full Russia, Printed Page	91.80	91.10
Add for folio printed head	$ 4.50	
Add for folio printed page	$24.50	
Add for A-Z index	$ 7.55	
Loose leaf record binders only, full Russia, letter with back title 7 or 8 quire capacity, each		$42.50

History: En. Sec. 14, Ch. 118, L. 1937; amd. Sec. 10, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 8, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1217. Stock forms without county name.

Budget form CB-2—per 100		$ 7.15
Budget form CB-3—per 100		7.15
Budget form CB-4—per 100		7.35
Budget form CB-5—per 100		8.50
Budget form CB-6—per 100		8.50
Budget form CB-7—per 100		22.00
Justice docket, size 320 pages, each		$30.00
Report of justice fees received, size 14 x 17, ruled and printed one side, per 100		7.50
Teachers' registers, six week, each		$ 1.25
District school budget applications, form 1	100	6.50
	Additional 100	5.50
High school budget application sheets	100	7.00
	Additional 100	6.00
Elementary and high school budget record sheets, ruled and printed one side, size 16¾ x 26	50	8.50
	Additional 100	14.75
School census reports	per 250	7.00
	per 500	12.00
Teachers' contracts	per 50	4.00
	per 100	5.50
Trustees' annual reports	per 50	6.00
	per 100	10.00
Teachers' reports	per 250	10.50
	per 500	15.00
Superintendent's or principal's reports	per 100	5.00
	Additional per 100	4.50

For 1-time Carbon and N.C.R. (carbonized paper forms) see paragraph 2, section 19.

History: En. Sec. 17, Ch. 118, L. 1937; amd. Sec. 13, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 9, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings, substituted "Elementary and high school budget record sheets, ruled and printed one side, size 16¾ x 26" for "District school budget record sheets, ruled and printed one side, size 13¾ x 21¾" and added the last classification pertaining to carbon.

16-1219. Bids, how made—other prices. Bids may be made either on the entire act, or bids may be made under each section. If each section is bid upon separately the section must be bid upon in its entirety and not upon individual items in such section.

All other blank books, 1-time carbon, carbonized paper, and printed forms not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin Printing Catalog list, or by authority of the board of county commissioners at the price mutually agreed upon.

History: En. Sec. 19, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951; amd. Sec. 10, Ch. 200, L. 1957.

Amendment

The 1957 amendment in the second paragraph substituted the words "1-time carbon, carbonized paper, and printed forms" for the words "and printing" and added the words "or by authority of the board of county commissioners at the price mutually agreed upon."

Repealing Clause

Section 11 of Ch. 200, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

Section 16-1633. Rural special improvement district revolving fund.
16-1634. Moneys for fund—tax levy.
16-1635. Use of revolving fund—loans.
16-1636. Loan—lien—repayment.
16-1637. Excess moneys in revolving fund—transfer to general fund.

16-1604. (4577) **Protests against creation or extension of district, etc.**

Operation and Effect

Where city agrees to provide water for a special improvement district the city does not have the duty or the obligation to install at its own expense the water mains necessary. Crawford v. City of Billings, — M —, 297 P 2d 292, 295.

References

Cited or applied in Crawford v. City of Billings, — M —, 297 P 2d 292, 297.

16-1611. (4584) **Assessment of property—apportionment of costs, etc.**

References

Cited or applied in Crawford v. City of Billings, — M —, 297 P 2d 292, 298.

16-1633. Rural special improvement district revolving fund. The board of county commissioners of any county in the state which may hereafter create any rural special improvement district or districts for any purpose shall, in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and

maintain by resolution a fund to be known and designated as "Rural Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 188, L. 1957.

Title of Act

An act relating to rural special improvement districts in counties; authorizing the creation, maintenance and use of a rural special improvement district revolving fund in any county for the purpose of securing prompt payment of rural special improvement district bonds and warrants and interest thereon, and requiring levy of taxes when necessary for the financial requirements of such fund; and repealing all acts and parts of acts in conflict herewith.

16-1634. Moneys for fund—tax levy. For the purpose of providing funds for such revolving fund the board of county commissioners

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund; and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding rural special improvement district bonds and warrants.

History: En. Sec. 2, Ch. 188, L. 1957.

16-1635. Use of revolving fund—loans. (1) Whenever any rural special improvement district bond or warrant, or any interest thereon, shall hereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 2 [16-1634] of this act by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board of county commissioners may so agree to and undertake, subject to the maximum limitations imposed by said section 2 [16-1634] of this act, which said undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 188, L. 1957.

16-1636. Loan—lien—repayment. Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments, and on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the board of county commissioners, be transferred to the revolving fund; and after all the bonds and warrants issued on any rural special improvement district have been fully paid, all moneys remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund; if after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: En. Sec. 4, Ch. 188, L. 1957.

16-1637. Excess moneys in revolving fund—transfer to general fund. Whenever there is in the revolving fund an amount in excess of the amount which the board deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order such excess or any part thereof transferred to the general fund of the county.

History: En. Sec. 5, Ch. 188, L. 1957.

Separability Clause

Section 6 of Ch. 188, Laws 1957 read: "If any clause, sentence, paragraph, section, or other part whatsoever, of this act shall for any reason be held to be invalid or inoperative, the remainder of this act shall not thereby be invalidated, impaired, or in anywise affected, and such holding shall be confined in its effect to the clause, sentence, paragraph, section, or other part of this act, directly adjudged to be invalid or inoperative."

Repealing Clause

Section 7 of Ch. 188, Laws 1957 read "All acts and parts of acts in conflict with this act are hereby repealed to the extent of such conflict."

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section 16-1802. Claims to be itemized—time for presenting.

16-1802. (4605) Claims to be itemized—time for presenting. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated; if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Claims against the county shall contain the following statement: "I certify that this claim is correct and

just in all respects, and that payment or credit has not been received." Claims need not be verified by affidavit. Every claim against the county must be presented within a year after the last item accrued.

History: Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R. C. M. 1921; amd. Sec. 1, Ch. 56, L 1957. Cal. Pol. C. Sec. 4072.

Amendment

The 1957 amendment deleted the words "and is verified by affidavit showing that the account is just and wholly unpaid; and" which appeared between the words "stated" and "if" and added the second sentence.

CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS —GENERAL PROVISIONS

Section 16-2414. What offices to be kept open at county seat.

16-2403. (4725) County officers enumerated.

Cross-Reference

Group insurance for county officers and employees, authority, contribution, sec. 11-1024.

16-2414. (4736) What offices to be kept open at county seat. The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney, the county auditor in counties where such officer is maintained and the county assessor must keep their offices open for the transaction of business from 8:00 o'clock A. M. until 5 o'clock P. M. continuously every day in the year except holidays and Saturdays, provided however, that the said offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open.

The county superintendent of schools shall keep his office open from 8:00 o'clock A. M. until 5 o'clock P. M. every day when he is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk the office shall be kept open from 8:00 o'clock A. M. until 5 o'clock P. M. every day except holidays and except Saturdays. Said office shall be kept open at all times as business may require.

This act shall not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R. C. M. 1921; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957. Cal. Pol. C. Sec. 4116.

Amendment

The 1957 amendment changed the office hours from 9:00 A. M. to 8:00 P. M. and authorized Saturday closing. Formerly the office hours were 9:00 A. M. to 5:00 P. M. while the office could be closed Saturday afternoons only. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 199, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 199, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

Section 16-2618. Deposit of public funds by county, city and town treasurers.

16-2618. (4767) Deposit of public funds by county, city and town treasurers. (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a time deposit as evidenced by certificates of deposit or deposits, which by agreement may not be withdrawn on less than thirty (30) days' notice by the said board of county commissioners, or city or town council; and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district of Montana, Federal Land Bank bonds, bonds of other states and counties of other states, bonds of the Dominion of Canada, and Canadian Provinces, and other Canadian bonds guaranteed by the Canadian government or provinces thereof, personal bonds, as hereinafter provided, when accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon, which shall be attached and made a part of the bond and bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county

funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) All interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur

through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) No personal bond shall be accepted except when such bond is for the purpose of renewing a personal bond now in effect, and from and after December 31, 1930, personal bonds shall not be considered as acceptable security; provided, further, that from and after the passage of this act, no new or additional deposit accounts shall be opened by any treasurer under any personal bond.

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957. Cal. Pol. C. Sec. 4161.

Amendment

The 1957 amendment in subd. (1) deleted a former second sentence which read "The sums so deposited shall bear uniform interest at the rate of not more than two per centum (2%) per annum, payable quarter annually"; deleted in the present second sentence the words "on demand" which appeared between the words "deposits" and "together"; and after the words "together with interest" deleted the word "thereon" and added the words "on any time or savings deposits * * *" to end of subd. (1); in subd. (6) inserted the words "or investments" between the words "deposits" and "shall" and in subd. (7) deleted the words "and approval" which appeared after the word "passage" in the proviso clause.

Repealing Clause

Section 2 of Ch. 50, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 27—SHERIFF

Section 16-2723. Mileage and expense of sheriff.

16-2709. (4781) Liability for refusing to levy or sell.

References

Cited or applied in Stokke v. Graham, — M —, 281 P 2d 1025, 1027.

16-2723. (4885) Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or at the state reform school, or insane persons at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state board of examiners or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive eleven cents (11¢) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive eleven cents (11¢) additional per mile, the same to be in full for transporting and dieting of such person

during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957.

Compiler's Note

Section 2 of Ch. 82, Laws 1957 amended sec. 25-226. Section 3 was a general repealing clause and section 4 made the act effective upon its approval. Approved March 2, 1957.

Amendment

The 1957 amendment increased the rate received per mile from nine cents to eleven cents and in the last sentence deleted the words "team or horse hire, or" which appeared immediately before the words "any other expense."

CHAPTER 28—COUNTY JAILS

16-2803. (12468) County jails, by whom kept and for what used.

References

Cited or applied in State v. MacLean, — M —, 291 P 2d 250, 252.

16-2807. (12472.1) Sheriff must receive federal prisoners.

References

Cited or applied in State v. MacLean, — M —, 291 P 2d 250, 252.

CHAPTER 29—COUNTY CLERK

16-2917. (4811) Duties of county clerk.

Cross-Reference

Duties regarding issuance of identification cards showing age of 21 reached, secs. 4-506 to 4-508.

CHAPTER 31—COUNTY ATTORNEY

16-3101. (4819) Duties of county attorney.

Power of Attorney General to Institute Actions in District Courts

The statutes of this state do not authorize the institution of an action in the district courts by the attorney general on behalf of the state but rather they specifically state that such an action must be brought by the county attorney of the county, however, under the common-law powers and duties of the attorney general he can institute such an action where the public interest is affected and the state is a party in interest. State ex rel. Olsen v. Public Service Commission, — M —, 283 P 2d 594.

CHAPTER 32—COUNTY AUDITOR

16-3211. (4833) Repealed.

Repeal

This section (Sec. 10, p. 230, L. 1891), relating to the county auditor as county superintendent of the poor, was repealed by Sec. 1, Ch. 51, Laws 1957.

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

16-4101. Planning and zoning districts—commission—creation.

Cross-Reference
Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4102. Development pattern.

Cross-Reference
Provisions of this section not appliable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4103. Adoption of development district.

Cross-Reference
Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4104. Surveys and examinations—powers.

Cross-Reference
Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4105. Regulations—appeals—permits for construction.

Cross-Reference
Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4106. Effect of act upon powers of incorporated communities, etc.

Cross-Reference
Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

Section 16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents.
16-4402. City or town concurrence in resolution—notices.
16-4403. Protests and hearing.
16-4404. Resolution creating district.
16-4405. Description.
16-4406. Federal property omitted from assessment.
16-4407. Method of assessment.
16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment.
16-4409. Resolution—notice—hearing.
16-4410. Assessments as lien.
16-4411. Ex-officio commissioners of district—jurisdiction.
16-4412. Federal funds for local public works programs.
16-4413. Applicable provisions of rural improvement district act.

16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents. Whenever the public convenience and necessity may require in order to construct sanitary and/or storm sewer systems within any county, and which said sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners with the approval of the city or town council may create metropolitan sanitary and/or storm sewer districts.

Before creating any metropolitan sanitary and/or storm sewer district the board of county commissioners shall pass a resolution of intention so to do, which said resolution shall designate:

(a) the proposed name of such district,

(b) the necessity for the proposed district,

(c) a general description of the territory or lands to be included within said district, giving the boundaries thereof,

(d) the general character of the sanitary and/or storm sewer system and its proposed location,

(e) the name of the engineer who is to have charge of the work, and

(f) the estimated cost thereof.

History: En. Sec. 1, Ch. 185, L. 1957.

Title of Act

An act relating to the creation of metropolitan sanitary and storm sewer districts to serve inhabitants of both cities and incorporated towns and rural areas within counties; to empower the county commissioners to create metropolitan sanitary districts with the consent of city or town councils for the purpose of constructing sanitary or storm sewer systems; providing for the levy and collection of special assessments to pay for the same; and to adequately maintain same and extend payment of installments over any period not exceeding twenty years; to provide for the issuance of special improvement warrants or bonds in such metropolitan sanitary or storm sewer districts; providing for the powers and duties of the county commissioners in respect thereto; and repealing chapter 292, Laws of 1947.

16-4402. City or town concurrence in resolution—notices. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur in the resolution of the board of county commissioners a copy of the resolution of concurrence shall be transmitted to the board of county commissioners.

If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district. However, if the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolutions of intention, and of the concurrence therein by the city or town council, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 2, Ch. 185, L. 1957.

16-4403. Protests and hearing. At any time within thirty days after the date of the first publication of the passage of the resolution or intention, any owner of property liable to be assessed for said work may make written protest against the proposed work. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed work is made by the owners of more than fifty per cent of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 185, L. 1957.

16-4404. Resolution creating district. When no protests have been delivered to the county clerk within thirty days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Sec. 4, Ch. 185, L. 1957.

16-4405. Description. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 5, Ch. 185, L. 1957.

16-4406. Federal property omitted from assessment. Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners shall in the resolution of intention declare that the said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improve-

ment, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

History: En. Sec. 6, Ch. 185, L. 1957.

16-4407. Method of assessment. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of the improvements against the entire metropolitan sanitary district, and each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

History: En. Sec. 7, Ch. 185, L. 1957.

16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer districts may be spread over a term of not to exceed twenty (20) years, payment to be made in equal installments.

History: En. Sec. 8, Ch. 185, L. 1957.

16-4409. Resolution—notice—hearing. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Sec. 9, Ch. 185, L. 1957.

16-4410. Assessments as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for

cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 10, Ch. 185, L. 1957.

16-4411. Ex-officio commissioners of district—jurisdiction. The board of county commissioners shall be ex-officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this act, and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof, and for the condition and maintenance of all publicly owned streets, alleys, land, parks or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: En. Sec. 11, Ch. 185, L. 1957.

16-4412. Federal funds for local public works programs. The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

History: En. Sec. 12, Ch. 185, L. 1957.

16-4413. Applicable provisions of rural improvement district act. The provisions of sections 16-1607, 16-1608, 16-1609, 16-1610, 16-1615, 16-1616, 16-1619, 16-1620, 16-1621, 16-1622, 16-1623, 16-1624, 16-1625, 16-1626, 16-1627 and 16-1628, Revised Codes of Montana, 1947, pertaining to the powers and duties of the county commissioners in rural improvement districts shall likewise apply under the provisions of this act.

History: En. Sec. 13, Ch. 185, L. 1957.

Repealing Clause

Section 14 of Ch. 185, Laws 1957 read "Chapter 292, Laws of 1947, is hereby repealed, providing however, that any metropolitan sanitary sewer districts established under the provisions of chapter 292, Laws of 1947, shall be valid, and any obligations incurred thereunder shall in nowise be affected by the repeal of said chapter 292, Laws of 1947."

CHAPTER 45—COUNTY WATER DISTRICTS

Section 16-4501. Organization of county water districts authorized.
16-4502. Organization of county water districts.
16-4503. Petition—boundaries of district—publication.
16-4504. Time of consideration—final hearing.
16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.
16-4506. Election of directors—term of office.
16-4507. Nomination of officers.

16-4508. General law to govern.
16-4509. Officers subject to recall.
16-4510. Organization of board.
16-4511. Ordinances—enacting clause—compensation.
16-4512. General manager, secretary and auditor.
16-4513. Informality not to invalidate.
16-4514. Powers of district.
16-4515. Powers exercised by board.
16-4516. Duties of officers of board—depositary of funds—officers' bonds.
16-4517. Bonded indebtedness.
16-4518. Election.
16-4519. Notice.
16-4520. Publication.
16-4521. Canvass of returns.
16-4522. Two-thirds vote necessary.
16-4523. Value of bonds issued.
16-4524. Power to construct works across streets, etc.—right of way through state lands.
16-4525. Water rates.
16-4526. Rate to pay operating expenses.
16-4527. Commissioners to levy water taxes.
16-4528. Levy and collection of tax.
16-4529. Initiative.
16-4530. Referendum.
16-4531. Adding to district.
16-4532. Definitions.
16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.
16-4534. Directors may institute proceedings for exclusion—hearing—referendum.

16-4501. Organization of county water districts authorized. A county water district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

History: En. Sec. 1, Ch. 242, L. 1957.

Title of Act

An act to provide for the incorporation and organization and management of county water districts; to provide for the acquisition of water-rights or construction thereby of water-works; and for the acquisition of all property necessary therefor; and also to provide for the distribution and sale of water by said districts; providing for severability and an effective date.

16-4502. Organization of county water districts. The people of any county, or portion of a county, or city and county, whether such portion includes unincorporated territory or not, in the state of Montana, having a population of not less than three hundred (300) inhabitants, may organize a county water district under the provisions of this act by proceeding as herein provided.

History: En. Sec. 2, Ch. 242, L. 1957.

16-4503. Petition—boundaries of district—publication. A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of commissioners of the county in which the proposed water district is located, signed by the registered voters within the boundaries of the proposed water district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed water district. Such petition shall set forth and describe the proposed boundaries of such water district, and shall pray that the same be incorporated under the provisions of this act,

and the text of such petition shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in such county, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

History: En. Sec. 3, Ch. 242, L. 1957.

16-4504. Time of consideration—final hearing. With such publication there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard. At such time the board of commissioners shall hear the petition and those appearing thereon together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district and may adjourn such hearing from time to time, not exceeding four (4) weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable and shall define and establish such boundaries, but said board shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district; nor shall any lands which will not, in the judgment of said board, be benefited by such district be included within such proposed district. Any person whose lands are benefited by such district may upon his application, in the discretion of said board, have such lands included within said proposed district.

History: En. Sec. 4, Ch. 242, L. 1957.

16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election. Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners shall give notice of an election

to be held in said proposed water district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "———— county water district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in said county. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize ———— county water district under (naming the chapter containing this act) of the acts of the ———— session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of electors under the general election laws of the state, and is the owner of taxable real property situated within the boundaries of the proposed district. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory included in such proposed water district shall be in favor of organizing such county water district, said board shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water district under the name theretofore designated, and the county clerk shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the county water district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated as a county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1955.

16-4506. Election of directors—term of office. At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the county water district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are

no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such water district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such county water district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said water district, of one additional director, to be appointed by the said board of commissioners. Any director so elected or appointed shall be a qualified freeholder and a resident of said district. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such county water district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general water district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special water district election.

History: En. Sec. 6, Ch. 242, L. 1957.

16-4507. Nomination of officers. (1) The mode of nomination and election of all elective officers of such water district to be voted for at any water district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION
Individual Certificate.

State of Montana }
} ss.
County of _____ }

Prect. No._____

I, the undersigned, certify that I do hereby join in a petition for the nomination of _____, whose residence is at _____ for the office of _____ of the _____ county water district to be voted for at the water district election to be held in the _____ county water district on the _____ day of _____, 19__; and I further certify that I am a qualified

elector and freeholder residing within said district, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. _____ street, _____, and that my occupation is _____.

(Signed)_____

State of _____
} ss.
County of _____

_____, being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed)_____

Subscribed and sworn to before me this _____ day of _____ 19__.

_____
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to _____, at _____, Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall indorse thereon the date upon which the petition was presented to him.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition can not be filed, and shall return the petition to the person

named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in the county in which such municipal water district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION

_____ County Water District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at municipal water district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said county water district.

(22) Informality not to invalidate. No informality in conducting county water district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act.

History: En. Sec. 7, Ch. 242, L. 1957.

16-4508. General law to govern. The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all water district elections, except as in this act otherwise provided; provided, that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any water district election, including any water district bond election.

History: En. Sec. 8, Ch. 242, L. 1957.

16-4509. Officers subject to recall. Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or by said board of commissioners for a full term, is subject to recall by the voters of any county water district organized under the provisions of this act, in accordance with the recall provisions of sections 11-3220 to 11-3227, Revised Codes of Montana, both inclusive, applicable to officers under the commission-manager plan.

History: En. Sec. 9, Ch. 242, L. 1957.

16-4510. Organization of board. The board of directors shall be the governing body of such county water district. It shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided; it shall choose one of its members president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All legislative sessions of the board of directors whether regular or special shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

History: En. Sec. 10, Ch. 242, L. 1957.

16-4511. Ordinances—enacting clause—compensation. The board of directors shall act only by ordinance or resolution. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the board. The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of _____ county water district as follows:" All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary. Each of the members of the board of directors shall receive for each attendance at the meetings of the board ten dollars ($10.00), and shall receive no other compensation. No director, however, shall receive pay for more than three (3) meetings in any calendar month. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

History: En. Sec. 11, Ch. 242, L. 1957.

16-4512. General manager, secretary and auditor. The board of directors shall at its first meeting, or as soon thereafter as practicable, appoint, by a majority vote, a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor. The general manager, secretary, and auditor, shall receive such compensation as the board of directors shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957.

16-4513. Informality not to invalidate. No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any county water district, and any proceeding wherein the validity of such incorporation is denied shall be commenced within three (3) months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said county water district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

History: En. Sec. 13, Ch. 242, L. 1957.

16-4514. Powers of district. Any county water district incorporated as herein provided shall have power:

(1) To have perpetual succession;

(2) Sue and be sued. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(3) Adopt seal. To adopt a seal and alter it at pleasure;

(4) Hold property. To take by grant, purchase, gift, devise, or lease; to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

(5) Acquire water-works. To construct, purchase, lease, or otherwise acquire, and to operate and maintain water-rights, water-works, canals, conduits, reservoirs, lands and rights useful or necessary to store, conserve, supply, produce, or convey water for household, domestic or other similar purposes for the benefit of the district;

(6) Store water. To store water for the benefit of the district; to conserve water for future use; to appropriate, acquire and conserve water and water-rights for the purposes of the district; to commence, maintain, intervene in and compromise, in the name of the district, and to assume the costs of any action or proceeding involving or affecting the ownership or use of waters or water-rights within the district used or useful for any purpose of the district or a benefit to any land situated therein; to commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants; and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger the inhabitants or lands of the district;

(7) Lease water-works. To lease of and from any person, firm, or public or private corporation with the privilege of purchase, or otherwise, existing water-rights, water-works, canals or reservoir systems; and to carry on and maintain the same; also to sell water, or the use thereof, for household or domestic use or other similar purposes; and whenever there is a surplus of water to sell or otherwise dispose of the same, to municipalities or towns or to consumers located within or without the boundaries of the district;

(8) Cooperate with United States. To cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof and supplementary thereto or any other act of Congress authorizing or permitting such cooperation or contract for purposes of construction of works necessary or appropriate for the purposes of the district or for the acquisition, purchase, extension, operation, or maintenance of such works, or for a water supply or for the assumption as principal or guarantor of indebtedness to the United States and to carry out and perform the terms of any contract so made;

(9) Borrow money. To borrow money and incur indebtedness and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof;

(10) Levy taxes. To cause taxes to be levied in the manner provided for herein for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided;

(11) Make contracts. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

History: En. Sec. 14, Ch. 242, L. 1957.

16-4515. Powers exercised by board. The powers herein enumerated shall, except as herein otherwise provided, be exercised by the board of directors above provided for and elected and appointed as described herein.

History: En. Sec. 15, Ch. 242, L. 1957.

16-4516. Duties of officers of board—depositary of funds—officers' bonds. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The general manager shall have full charge and control of the maintenance, operation and construction of the water-works or water-works system of said water district, with full power and authority to employ and discharge all employees and assistants at pleasure, prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board of directors. The general manager shall report to the board of directors in accordance with such rules and regulations as they may adopt. The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial

condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three (3) members of the board of directors and by the general manager. The board of directors shall also designate a depositary or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe. The general manager, secretary and auditor, and all other employees or assistants of said district who may be required so to do by the board of directors, shall give bonds to the district conditioned for the faithful performance of their duties as the board of directors from time to time may provide.

History: En. Sec. 16, Ch. 242, L. 1957.

16-4517. Bonded indebtedness. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957.

16-4518. Election. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the day so fixed, in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided.

History: En. Sec. 18, Ch. 242, L. 1957.

16-4519. Notice. Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the water district, boundaries of voting precincts, which shall include therein only the lands to be benefited, as stated in such resolution, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct.

History: En. Sec. 19, Ch. 242, L. 1957.

16-4520. Publication. Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in such water district, which newspaper shall be designated by the board of directors; and if there is no newspaper printed in such water district, then in some newspaper of general circulation published in the county in which the district is situated. Every qualified elector residing within such voting precincts, but no others, shall be

entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

History: En. Sec. 20, Ch. 242, L. 1957.

16-4521. Canvass of returns. The returns of such election shall be made to and the votes canvassed by said board of directors on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state, so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided.

History: En. Sec. 21, Ch. 242, L. 1957.

16-4522. Two-thirds vote necessary. If from such returns it appears that more than two thirds of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957.

16-4523. Value of bonds issued. Any bonds issued by any district organized under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

History: En. Sec. 23, Ch. 242, L. 1957.

16-4524. Power to construct works across streets, etc.—right of way through state lands. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said works may intersect or cross; provided, such works are constructed in such manner as to afford security for life and property, and said board of directors shall restore the crossings and intersections to their former state as near as may be, or in manner not to have impaired unnecessarily their usefulness. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state.

History: En. Sec. 24, Ch. 242, L. 1957.

16-4525. Water rates. The board of directors shall fix all water rates, and shall through the general manager collect the charges for the sale and distribution of water to all users.

History: En. Sec. 25, Ch. 242, L. 1957.

16-4526. Rate to pay operating expenses. The board of directors in the furnishing of water shall fix such rate as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due; it being the intention of this section to require the district to pay the interest and principal of its bonded debt from the revenues of the district.

History: En. Sec. 26, Ch. 242, L. 1957.

16-4527. Commissioners to levy water taxes. If, from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners of the county, or city and county, in which such water district is located, is required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board of commissioners and to the auditor, respectively, an estimate in writing of the minimum amount of money required by the district for the payment of the principal or interest on any bonded debt as it becomes due, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness, and also of the minimum amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, a tax sufficient for the payment thereof to be known as the "_____ county water district bond tax"; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected a tax sufficient for the payment thereof to be known as the "_____ county water district water tax."

When the minimum amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or where the water district is located more than one (1) mile from the boundary of an incorporated city or town, said assessment may, at the option of the board of county commissioners, be based upon the assessed value of the lots or parcels of land within said district.

History: En. Sec. 27, Ch. 242, L. 1957.

16-4528. Levy and collection of tax. Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district. All such taxes shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be paid to the district for which such taxes were

levied and collected. Such taxes, if for the payment of a bonded debt, shall be a lien on all the property benefited thereby, as so stated in the resolution of the board of directors aforesaid, and all taxes for other purposes shall be a lien on all the property in the territory comprising the district; and said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes.

History: En. Sec. 28, Ch. 242, L. 1957.

16-4529. Initiative. Ordinances may be passed by the electors of any county water district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

History: En. Sec. 29, Ch. 242, L. 1957.

16-4530. Referendum. Ordinances may be disapproved and thereby vetoed by the electors of any such county water district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Sec. 30, Ch. 242, L. 1957.

16-4531. Adding to district. Any portion of a county or any municipality, or both, may be added to any county water district organized under the provisions of this act, at any time, upon petition presented in the manner therein provided for the organization of such water district, which petition may be granted by ordinance of the board of directors of such water district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such water district and in the proposed addition, at a general or special election held as herein provided, within seventy (70) days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such water district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

History: En. Sec. 31, Ch. 242, L. 1957.

16-4532. Definitions. Nothing in this act shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or the supply of water to, or the acquisition thereof by counties or municipalities within this state. The term "municipality,"

as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such water districts. The term "county" shall be understood and construed to include "city and county." In municipalities in which there is no mayor the duty imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees or other chief executive of the municipality. The word "district" shall apply, unless otherwise expressed or used, to a water district formed under the provisions of this act, and the word "board" and the words "boards of directors" shall apply to the board of directors of such district.

History: En. Sec. 32, Ch. 242, L. 1957.

16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands. Any territory, included within any county water district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion therein, may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said county water district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the water district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars ($100.00), to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the water district he shall call a meeting of the board of directors of the district at a time not less than twenty-five (25) days nor more than fifty (50) days after the filing of the petition and cause a notice of the filing of such petition to be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper within said district, if there be one, and if not, in some newspaper of general circulation published in the county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board

of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands, or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

History: En. Sec. 33, Ch. 242, L. 1957.

16-4534. Directors may institute proceedings for exclusion—hearing—referendum. The board of directors of any county water district formed under the provisions of this act may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included, or which may not be benefited in any manner by their continued inclusion therein. Such proceedings shall be initiated by the board of directors by the passage of a resolution requiring all persons interested to appear and show cause before the board of directors, at a time and place specified, why such lands, describing them, should not be excluded from the district and fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing. Upon the passage of such resolution the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board of directors by its resolution hereinbefore mentioned shall be not less than twenty-five (25) days nor more than fifty (50) days after the passage of such resolution and the place of hearing so fixed shall be a convenient place within the district; provided that the final action of the board of directors under this section shall be subject to the referendum by the electors of the water district according to section 30 [16-4530] of this act.

History: En. Sec. 34, Ch. 242, L. 1957.

Separability Clause

Section 35 of Ch. 242, Laws 1957 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

Effective Date

Section 36 of Ch. 242, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

TITLE 17—DAMAGES AND RELIEF

CHAPTER 3—MEASURE OF DAMAGES

17-310. (8676) Breach of agreement to pay for personal property sold.

References

Cited or applied in Bennett v. Dodgson, — M —, 284 P 2d 990, 996.

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-803. (8716) No remedy unless mutual.

Operation and Effect

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank, and the vendee had not done so. Sidwell v. The New Mine Sapphire Syndicate, — M —, 297 P 2d 299, 303. (Dissenting opinion, — M —, 297 P (2d) 299, 303.)

17-809. (8722) What parties cannot have specific performance, etc.

Operation and Effect

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank and he had not done so. An allegation in the complaint that the vendee had deposited a substantial sum in the bank was not sufficient since the contract called for a specific amount. Sidwell v. The New Mine Sapphire Syndicate, — M —, 297 P 2d 299, 303. (Dissenting opinion, — M —, 297 P 2d 299, 303.)

CHAPTER 9—SPECIFIC RELIEF—REVISION AND RESCISSION OF CONTRACTS

17-901. (8726) When contract may be revised.

Operation and Effect

Where a landowner, induced by the fraud of the person with whom he was contracting, assigned a 1/32 royalty interest instead of an undivided 1/32 interest in and to minerals under and upon his lands, the assignment will be reformed, amended, and corrected by the courts to correctly embody the agreement of the parties. Carroll v. Funk, 222 F 2d 508, 511.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS—OTHER GENERAL PROVISIONS

19-102. (15) Words and phrases, how construed.

References

Cited or applied in State v. Bain, — M —, 295 P 2d 241, 244.

19-103. (16) Certain words defined.

References

Cited or applied in State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 1001.

TITLE 20—DEPOSIT

CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-203. (7650) Obligations as to use of thing deposited.

References

Cited or applied in State ex rel. Olsen v. Sundling, — M —, 281 P 2d 499, 502.

20-209. (7656) Gratuitous deposit defined.

References

Cited or applied in State ex rel. Olsen v. Sundling, — M —, 281 P 2d 499, 502.

TITLE 21—DIVORCE

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

21-118. (5750) Divorces denied, on showing what.

Recrimination

The doctrine of recrimination is that if both parties have a right to divorce, neither party has. The principle is of ancient origin and reached back to the Mosaic Code and beyond. Although the Roman law did not allow divorce yet some legal historians trace the rule back to the "compensatio criminum" of the Roman law relating to property settlements. The ecclesiastical courts of England adopted the principle from the canon law and then injected it into proceedings for separation from bed and board. Bissell v. Bissell, — M —, 284 P 2d 264, 270.

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so often happens that neither party to a suit has been free from fault. Bissell v. Bissell, — M —, 284 P 2d 264, 271.

When the record clearly shows "the legitimate objects of the marriage have been destroyed" then the parties are entitled to have the marriage dissolved. No public policy would be served by denying a divorce because each party was guilty of extreme cruelty toward the other. Bissell v. Bissell, — M —, 284 P 2d 264, 271.

21-128. (5760) Recrimination, what constitutes.

Recrimination

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so often happens that neither party to a suit has been free from fault. Bissell v. Bissell, — M —, 284 P 2d 264, 271.

21-134. (5766) Period of residence required to entitle plaintiff, etc.

References

Cited or applied in Mortenson v. Mortenson, — M —, 285 P 2d 834, 836.

21-137. (5769) Expenses of action—alimony.

Attorney's Fees

This section does not authorize attorney fees in an action to modify the custody provisions of a decree after the divorce decree has become final. Wilson v. Wilson, — M —, 278 P 2d 219, 224, overruling McDonald v. McDonald, 124 M 26, 218 P 2d 929. (Dissenting opinions, — M —, 278 P 2d 219, 225, 226.)

The state legislative assembly saw fit to make and provide a specific exception to the general principle that ordinarily one party to a suit may not be called upon to pay the litigation expenses of his adversary by empowering the courts to make allowances therein to the wife for counsel fees, but only while such action for divorce is pending. Wilson v. Wilson, — M —, 278 P 2d 219, 222.

Expenses of Action

Upon timely and proper application made in advance of the performance of the professional services and the incurring of expenses rested within the discretion of the trial court to grant expense money regardless of whose acts and conduct were responsible for the granting of the divorce. Bissell v. Bissell, — M —, 284 P 2d 264, 269.

21-138. (5770) Orders respecting custody of children.

Attorney's Fees

This section does not authorize attorney fees in an action to modify the custody provisions of a decree after the divorce decree has become final. Wilson v. Wilson, — M —, 278 P 2d 219, 224, overruling McDonald v. McDonald, 124 M 26, 218 P 2d 929. (Dissenting opinions, — M —, 278 P 2d 219, 225, 226.)

Custody of Children

The statutes expressly invest the trial judge with much discretion regarding the custody of children. Wilson v. Wilson, — M —, 278 P 2d 219, 222.

Operation and Effect

An order by a California court which modified a prior California divorce decree

and awarded custody of minor children to the father was void because it was made without jurisdiction where it was shown that the children were domiciled in Montana with their mother, even though the mother made a general appearance in the California court to contest the modification. Where the minor's domicil is not within the jurisdiction at the time, the "res" likewise is not within the jurisdiction. The courts may not proceed even with both parents before it. A minor has a juristic status of his own to which it is difficult indeed to deny recognition when his custody is the question before the court, and even though the contest is between his parents, who themselves have submitted to the jurisdiction of the court. For he is the real party in interest in any such case as is evidenced by the familiar rule that in awarding his custody the paramount inquiry is always his welfare and best interests. Application of Enke, — M —, 287 P 2d 19, 24.

21-139. (5771) Support of wife and children on divorce, etc.

References

Cited or applied in Wilson v. Wilson, — M —, 278 P 2d 219, 222.

TITLE 23—ELECTIONS

Chapter 6. Judges and clerks of elections, 23-608, 23-612.

CHAPTER 6—JUDGES AND CLERKS OF ELECTIONS

Section 23-608. Clerks to mail to judges notices of election—form of notices.
23-612. Instructions of judges of elections.

23-608. (594) Clerks to mail to judges notices of election—form of notices. The clerks of the several boards of county commissioners must, at least twenty (20) days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, 19__, at the house _____, in the county of _____, an election will be held for _____ (naming the offices to be filled, including electors of president and vice-president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at 8:00 A.M. and continuing open until 8:00 P.M. of the same day.

Dated this _____ day of _____, A.D. 19__.

Signed A. B., clerk of the board of county commissioners.

History: Ap. p. Sec. 7, p. 461, Cod. Stat. 1871; re-en. Sec. 7, p. 71, L. 1876; re-en. Sec. 521, 5th Div. Rev. Stat. 1879; re-en. Sec. 1013, 5th Div. Comp. Stat. 1887; amd. Sec. 1266, Pol. C. 1895; re-en. Sec. 506, Rev. C. 1907; re-en. Sec. 594, R. C. M. 1921; amd. Sec. 2, Ch. 167, L. 1945; amd. Sec. 1, Ch. 14, L. 1957.

Amendment

The 1957 amendment substituted "8:00 A. M. and continuing open until 8:00 P. M." for "8 o'clock in the morning and continuing open until 6 o'clock in the afternoon."

23-612. Instructions of judges of elections. Before each election, general or primary, all judges appointed to act at said election, who do not possess a certificate of instruction as provided for in this act, shall be instructed by a person delegated by the board of county commissioners in regard to the powers, duties, and liabilities imposed upon election judges by the election laws of the state of Montana. For the purpose of giving such instruction, the delegate of the board of county commissioners shall call such meeting or meetings of the judges of election as shall be necessary. Each judge of election shall attend such meeting or meetings and receive at least two (2) hours of instruction, and as compensation for the time spent in receiving such instruction, each judge that shall serve in the election shall receive the sum of one dollar ($1.00) per hour of instruction, to be paid to him at the same time and in the same manner as compensation is paid to him for his or her services on election day.

Upon the completion of the two (2) hours of instruction, the judge shall receive a certificate from the person delegated by the board of county commissioners from whom he or she received instruction, that the instruction has been completed, provided that no certificate of instruction

shall be valid for a period of greater than two (2) years. No person shall serve as a judge of election unless this certificate has been received, provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency. Notice of place and time of instruction of the political judges must be given by the board of county commissioners to the county chairmen of the two major political parties in the county.

History: En. Sec. 1, Ch. 210, L. 1957.

Title of Act

An act to provide for instruction of election judges; providing for the appointment by the board of county commissioners of an instructor; providing for compensation for the election judges being instructed; providing for certificates of instruction; providing for notice to the county chairman of the two major political parties of the county of the place and time of instruction; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 210, Laws 1957 repealed all acts and parts of acts in conflict therewith.

TITLE 25—FEES AND SALARIES

Chapter 2. Fees of county officers, 25-226, 25-231.
3. Fees and salaries of justices of the peace and constables, 25-306, 25-309.
5. Salaries of state officers, deputies and employees, 25-508.
6. Salaries of county officers, deputies and employees, 25-605.

CHAPTER 2—FEES OF COUNTY OFFICERS

Section 25-226. Fees of sheriff.
25-231. Fees of county clerks.

25-201. (4864) Disposal of fees collected by county officers.

References

Cited or applied in State v. Hale, — M —, 291 P 2d 229, 234.

25-203. (4887) Fees must be paid into county treasury, when.

References

Cited or applied in State v. Hale, — M —, 291 P 2d 229, 235.

25-226. (4916) Fees of sheriff.

(1) and (2). * * * [Subdivisions (1) and (2), same as parent volume.]

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad, he shall receive eleven cents (11¢) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

(4). * * * [Same as parent volume.]

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957.

Compiler's note

Section 1 of Ch. 82, Laws 1957 amended section 16-2723.

Amendment

The 1957 amendment in subd. (3) increased the rate received per mile from nine cents to eleven cents.

Repealing Clause

Section 3 of Ch. 82, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 82, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 2, 1957.

25-227. (4886) **Fees for board of prisoners.**

In General

An information which charges that defendants presented for allowance to the board of county commissioners a "certain false and fraudulent monthly report concerning board furnished Missoula County prisoners" is insufficient to state an offense unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. State v. MacLean — M —, 291 P 2d 250, 252. (Concurring and dissenting opinion, — M —, 291 P 2d 250, 252.)

25-229. (4910) **Sheriff falsely representing his expenses, etc.**

Information

Information which charges that defendants presented for allowance to the board of county commissioners a certain false and fraudulent monthly report concerning board furnished Missoula County prisoners is insufficient to state an offense unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. State v. MacLean, — M —, 291 P 2d 250, 252. (Concurring and dissenting opinion, — M —, 291 P 2d 250, 252.)

25-231. (4917) **Fees of county clerks.** The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

For first folio, thirty cents (30¢) and for each subsequent folio or fraction thereof, fifteen cents (15¢);

For each entry in index, ten cents (10¢);

For certificate that such instrument has been recorded with seal affixed, fifty cents (50¢);

For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

For each folio, twenty cents (20¢);

For each entry in index, ten cents (10¢);

For certificate that such mortgage, assignment or release has been recorded with seal affixed, fifty cents (50¢);

For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including certificate that such instrument has been recorded with seal affixed, two dollars ($2.00);

For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, one dollar ($1.00) for the first mining claim in said affidavit, and twenty-five cents (25¢) for each additional mining claim described and included therein;

For filing and indexing each chattel mortgage, affidavit of renewal of chattel or real estate mortgage, assignment or release of chattel mortgage, a writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, fifty cents (50¢);

For filing and indexing each certificate of incorporation or annual statement of any corporation, one dollar ($1.00);

For recording and platting each town site or map;

For each lot up to and including one hundred, twenty-five cents (25¢);

For each additional lot in excess of one hundred, five cents (5¢);

For recording the field notes of survey of any town site, per folio, twenty-five cents (25¢).

Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be one dollar ($1.00) for each page or fraction thereof of said instrument.

For a copy of any record or paper, for each folio, fifteen cents (15¢) and for each certification with seal affixed, fifty cents (50¢); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of fifty cents (50¢) for his certificate and seal.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, fifteen cents (15¢);

For each entry of discharge or satisfaction of mortgage, lien, or other instrument on the margin of record thereof, or upon the original instrument, and noting same in the indexes concerned, twenty-five cents (25¢);

For administering an oath with certificate and seal he shall make no charge;

For taking and certifying an acknowledgment, with seal affixed, for signature thereto he shall make no charge;

For recording and indexing any instrument which may be recorded pursuant to the provisions of section 73-104, Revised Codes of Montana, 1947, and which pertains to land allotted to an Indian or land within an Indian Reservation, except fee patents, he shall make no charge;

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957.

Compiler's Note

Section 1 of Ch. 148, Laws 1957 amended section 73-104.

Amendment

The 1957 amendment added the third paragraph from the end of this section.

Repealing Clause

Section 3 of Ch. 148, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section 25-306. Salaries of justices of the peace in certain townships—hours—quarters.
25-309. Fees of constable.

25-306. (4929) **Salaries of justices of the peace in certain townships—hours—quarters.** Justices of the peace in townships having a population of ten thousand (10,000) people, and not exceeding fifteen thousand (15,000) people, shall each receive a salary of two thousand eight hundred dollars ($2,800.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people, and not exceeding eighteen thousand (18,000) people, shall each receive a salary of three thousand dollars ($3,000.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people, shall each receive a salary of three thousand six hundred dollars ($3,600.00) per annum, payable monthly from the county treasury; justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 25-304 of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock A.M. to 12 o'clock M., and from 1 o'clock P.M. to 5 o'clock P.M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from 1 o'clock P.M. to 5 o'clock P.M. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion, select suitable quarters for such justices and may, in its discretion, pay for same from money in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953; amd. Sec. 1, Ch. 47, L. 1957.

Amendment

The 1957 amendment increased the salaries of justices of the peace in townships having a population of 10,000 people and not exceeding 15,000 people from $2,200 to $2,800; in townships of more than 15,000 people and not exceeding 18,000 people from $2,400 to $3,000; in townships of more than 18,000 people from $2,900 to $3,600. The 1957 amendment deleted the words "and not more than twenty-two thousand (22,000) people" which appeared after "(18,000) people" the second time it appears and deleted the words "justices of the peace in townships having a population of more than twenty-two thousand people shall each receive a salary of three thousand two hundred dollars ($3,200.00), payable monthly from the county treasury; and" which appeared immediately before the words "justices of the peace in such townships shall receive no other additional fees."

Repealing Clause

Section 2 of Ch. 47, Laws 1957 repealed all acts and parts of acts in conflict therewith.

25-309. (4932) **Fees of constable.** For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding, or executing a search warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs in civil actions.

When two or more persons are brought before a magistrate or to jail at the same time, or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expense incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.

The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars ($500.00) in any one year. The excess must be paid into the contingent fund of the county treasury.

That constables in townships having a population of twelve thousand (12,000) people and not exceeding twenty thousand (20,000) people, shall each receive a salary of $900.00 per annum, payable monthly from the county treasury. Constables in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of $2,400.00 per annum, payable monthly from the county treasury, and constables in such townships where the population is twelve thousand (12,000) people and not more than thirty-five thousand (35,000) people shall receive no other fees for civil suits or criminal actions except mileage in the performance of their duties. Any such fees received by the constables shall be turned over to the county treasurer.

History: En. Sec. 4643, Pol. C. 1895; re-en. Sec. 3177, Rev. C. 1907; re-en. Sec. 4932, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1935; amd. Sec. 1, Ch. 160, L. 1957.

Amendment

The 1957 amendment increased the salary of constables in townships having a population of more than twenty thousand from $1,500 to $2,400.

Repealing Clause

Section 2 of Ch. 160, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section 25-508. Traveling expenses of officers attending conventions.

25-508. (443) **Traveling expenses of officers attending conventions.** (1) Hereafter no state, county, city or school district officer or employee of the state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer may by virtue of his office be required by law to attend, provided that nothing herein shall prohibit the state board of examiners from authorizing the payment of the necessary traveling expenses of any state officer or employee, whenever in the judgment of the board an emergency exists, and the public interest demands, which reasons are to be spread on the minutes of the board of examiners, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary traveling expenses of an employee, or one (1) member of said board, to attend meetings of such association, or other meetings called for the express purpose of considering educational matters.

(2) Provided, further, three (3) members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys and sheriffs are hereby authorized to attend their respective meeting or

convention held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957.

Amendment

The 1957 amendment in subd. (2) substituted "three (3) members" for "one (1) member."

Repealing Clause

Section 2 of Ch. 184, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section 25-605. Salaries of certain county officers.

25-605. Salaries of certain county officers. The salaries of county treasurers, county clerks, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	$1,614	Below $2,000,000	$1,614
3,000 to 3,999	1,682	$2,000,000 to 2,999,999	1,682
4,000 to 4,999	1,752	3,000,000 to 3,999,999	1,752
5,000 to 5,999	1,822	4,000,000 to 4,999,999	1,822
6,000 to 6,999	1,905	5,000,000 to 5,999,999	1,905
7,000 to 7,999	1,948	6,000,000 to 6,999,999	1,948
8,000 to 8,999	2,012	7,000,000 to 7,999,999	2,012
9,000 to 9,999	2,076	8,000,000 to 9,999,999	2,076
10,000 to 12,499	2,196	10,000,000 to 11,999,999	2,196
12,500 to 14,999	2,263	12,000,000 to 13,999,999	2,263
15,000 to 17,499	2,329	14,000,000 to 15,999,999	2,329
17,500 to 19,999	2,395	16,000,000 to 17,999,999	2,395
20,000 to 24,999	2,406	18,000,000 to 19,999,999	2,406
25,000 to 29,999	2,494	20,000,000 to 22,499,999	2,494

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
30,000 to 39,999	2,572	22,500,000 to 24,999,999	2,572
40,000 to 49,999	2,663	25,000,000 to 29,999,999	2,663
50,000 to 59,999	2,755	30,000,000 to 34,999,999	2,755
60,000 to 69,999	2,849	35,000,000 to 39,999,999	2,849
70,000 to 79,999	2,944	40,000,000 to 44,999,999	2,944
80,000 to 89,999	3,052	45,000,000 to 49,999,999	3,052
90,000 to 99,999	3,114	50,000,000 to 54,999,999	3,114
100,000 and over	3,176	55,000,000 to 59,999,999	3,176
		60,000,000 to 64,999,999	3,263
		65,000,000 to 69,999,999	3,325

The total salary paid to county treasurers, county clerks, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be the sum of the salary shown in Column A based on population when added to the salary shown in Column B based on taxable valuation.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957.

Amendment

The 1957 amendment added county attorneys and sheriffs to the list of county officers; increased all salaries (for comparison, see parent volume); under Population of County substituted "80,000 to 89,999" for "80,000 and over" and added "90,000 to 99,999" and "100,000 and over"; under Taxable Valuation of County added the last two classifications and deleted from the last paragraph a proviso which read "provided that the minimum salary to be paid under the foregoing schedule will not be less than twenty-nine hundred eight ($2908.00) dollars per annum."

Repealing Clause

Section 2 of Ch. 22, Laws 1957 read "That sections 25-606 and 25-607, Revised Codes of 1947, as amended by section 2 and section 3 of chapter 222, Session Laws of 1953, and all other acts and parts of acts in conflict herewith are hereby repealed."

25-606, 25-607. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Secs. 2, 3, Ch. 222, L. 1953), relating to the salary of sheriff and county attorney, were repealed by Sec. 2, Ch. 22, Laws 1957.

TITLE 26—FISH AND GAME

Chapter 1. Fish and game commission and wardens—creation—powers and duties, 26-103 to 26-105, 26-107, 26-135, 26-136.
2. Fishing and hunting licenses, 26-202.1.
4. Beaver—trapping—license—protection, 26-401.

CHAPTER 1—FISH AND GAME COMMISSION AND WARDENS—CREATION—POWERS AND DUTIES

Section 26-103. Meetings.
26-104. Powers and duties of commission.
26-105. Compensation of commissioners.
26-107. State fish and game wardens—appointment—qualifications.
26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill.
26-136. Meat of wild animals so killed—disposition.

26-103. (3652) **Meetings.** The members of the commission shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or documents for the commission. The principal offices of the commission shall be located near the capitol building in Helena, and suitable and adequate rooms therefor, together with necessary furnishings, janitor services, light, heat and water shall be furnished by the state of Montana without charge to the commission until such time as the commission shall provide other building or buildings. The commission, upon the approval of the board of examiners, is empowered to construct, acquire, erect, equip, enlarge and improve or purchase buildings suitable for its needs to be located at the seat of the state government.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957.

Amendment

The 1957 amendment substituted the word "near" for the word "in" in the sentence beginning "The principal offices * * *" and added all that portion of this section beginning with the words "until such time as the commission * * *" in this same sentence.

Repealing Clause

Section 2 of Ch. 52, Laws 1957 repealed all acts and parts of acts in conflict therewith.

26-104. (3653) **Powers and duties of commission.**

(1) to (24). * * * [Subsections (1) to (24), same as parent volume.]

(25) It shall have authority to take rough fish of the following species: carp, suckers, catfish, buffalo, bullheads, goldeye, drum and squaw fish

from the waters of Fort Peck Reservoir, by means of day labor, contract or permit, through the use of seines, or nets under such rules, regulations, contracts or permit as the commission shall prescribe. All rough fish so removed by the commission, by permit or contract, shall be disposed of in such form and in such manner, by sale or otherwise, as the commission, by its regulations, contracts or permits shall prescribe.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957.

Amendment

The 1957 amendment added subsection (25).

Repealing Clause

Section 2 of Ch. 151, Laws 1957 repealed all acts and parts of acts in conflict therewith.

26-105. (3654) **Compensation of commissioners.** The members of the commission shall receive no compensation for their services as members thereof, except a per diem of fifteen dollars ($15.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission other than the chairman receive as said per diem a sum in excess of eight hundred dollars ($800.00) in any one (1) year, provided that the chairman of the commission shall not receive a sum in excess of one thousand dollars ($1,000.00) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission, which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. Sec. 1, Ch. 127, L. 1953; amd. Sec. 1, Ch. 57, L. 1957.

Amendment

The 1957 amendment inserted the words "other than the chairman"; substituted "eight hundred dollars ($800.00)" for "six hundred dollars ($600.00)" and inserted the words "provided that the chairman of the commission shall not receive a sum in excess of one thousand dollars ($1,000.00) in any one (1) year."

Repealing Clause

Section 2 of Ch. 57, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 57, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 27, 1957.

26-107. (3656) **State fish and game wardens—appointment—qualifications.** The director, by and with the consent and approval of the commission, shall have the power to employ and appoint a deputy director, and a sufficient number of state fish and game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, and for such other purposes as the director may designate. State fish and game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the commission. No person shall be appointed a state fish and game warden until a certificate shall have been issued to him by the commission to the effect that

he has passed the required examination and is a fit and proper person to perform the duties of the office. State fish and game wardens employed and appointed by virtue of this act shall be persons who have an interest in protection, conservation and propagation of wildlife, game and fur-bearing animals, fish and game birds; they shall devote all of their time to their official duties.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957.

Amendment

The 1957 amendment inserted the words "fish and" before the words "game wardens" each time they appear in this section and deleted the words "who shall have previously served as a state game warden," which appeared after the words "deputy director" in the first sentence.

Repealing Clause

Section 2 of Ch. 77, Laws 1957 repealed all acts and parts of acts in conflict therewith.

26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill. Upon the request or complaint of any landholder, or person in possession and having charge of any land in the state, that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the said property or crops thereon, the state fish and game department shall investigate and study the situation with respect to damage and depredation. The department may then decide to open a special season on the said game, or if the special season method be not feasible, then the department may destroy the animals causing the damage. Provided, further, that the fish and game department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. Provided, further, no wild ferocious animal damaging property or endangering life shall be covered by this act.

History: En. Sec. 1, Ch. 60, L. 1957.

Title of Act

An act authorizing the destruction of game animals causing property damage and providing for the supervision, control and disposition thereof by the state fish and game department; repealing all acts and parts of acts, in conflict herewith; and providing for an effective date of this act.

26-136. Meat of wild animals so killed—disposition. Provided, further, that the meat of all animals so killed or destroyed by the fish and game department or the authorized landholder shall be conserved and given to state institutions or to the school lunch programs, or welfare department. It shall be the duty of the fish and game department to provide transportation and distribution of the meat killed under the authorization of this act.

History: En. Sec. 2, Ch. 60, L. 1957.

Repealing Clause

Section 3 of Ch. 60, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 60, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section 26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses.

26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses. (1) Class A License. Resident Game Bird and Fishing License. Upon payment of a fee of three dollars ($3.00) the applicant who qualifies therefor shall receive a Class A license which shall entitle the holder thereof to pursue, hunt, shoot and kill game birds and possess dead bodies of game birds, and to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 License. Resident Big Game License. Except as herein provided, any holder of a Class A license, who is twelve (12) years of age or older, may, upon payment of an additional sum of three dollars ($3.00), be entitled to a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game animals and possess the carcass of game animals of the state which are authorized by the commission to be pursued, hunted, shot, killed, taken or possessed.

(a) On and after January 1, 1958, no big game hunting license shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license either: (1) evidence that he has held a hunting license issued by this state in a prior year, or (2) a certificate of competency as provided by this section; providing further that all resident persons under fifteen (15) years of age must present a certificate of competency even if he has held a hunting license in prior years.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person, found by it to be competent, to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed, a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. To Pursue, Hunt, Shoot, Kill, Take and Possess Deer. Any holder of a Class A-1 license may, upon payment of an additional sum of two dollars ($2.00) to any agent of the fish and game commission, authorized to issue fishing and hunting licenses, be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot and kill deer with bow and arrow and to possess the carcass of deer during a special season, as same may be designated by the fish and game commission.

(4) Class B License—Nonresident, or a Person Having Less Than Six (6) Months Residence in the State. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars ($10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the

holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(5) Class B-1 License—Nonresident and Persons Having Less Than Six (6) Months Residence in the State. Game Bird License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars ($25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(6) Class B-2 License—Nonresident or Persons Having Less Than Six (6) Months Residence in the State. Big Game License. Any nonresident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars ($100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(7) Class B-3 License—Temporary Nonresident or Tourist License. Any nonresident of the state of Montana, upon payment of the sum of three dollars ($3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

(8) Special Licenses. Any applicant who is the holder of a Class A-1 resident big game license or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which, in the judgment of the fish and game commission is to be issued and shall pay the following fees therefor:

Moose, twenty-five dollars ($25.00).

Mountain Goat, five dollars ($5.00).

Mountain Sheep, fifteen dollars ($15.00).

Bison or Buffalo, twenty-five dollars ($25.00).

(9) Class C License—Trapper's License. Any holder of a Class A license, upon making application and paying the sum of ten dollars ($10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, except beaver, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(10) Class C-1 License—Land Owner's Trapper's License. Any owner or tenant, or member of the immediate family of said owner or tenant,

upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(11) Exception. Any person a resident of the state of Montana as defined in section 26-202.3 of the Revised Codes of Montana, 1947, subsection 2, chapter 267, Laws of Montana, 1955, who has attained the age of seventy (70) years shall be entitled to fish and hunt game birds without a Class A license, provided that said persons carry proof of age in lieu of the Class A license described in the foregoing subsection (1), and provided that for persons convicted of any violation of the fish and game laws or regulations of the state of Montana, the privilege conferred by this subsection shall be revoked for a period of not less than six (6) months.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957.

Compiler's Note

This section was amended twice in the 1957 Session. Once by Ch. 16 and once by Ch. 100. Neither chapter contained an effective date. Chapter 16 was approved Feb. 16, 1957 while Ch. 100 was approved March 4, 1957. Neither amendment contained the changes made by the other chapter but each chapter amended the section in different particulars. As the amendments do not seem to conflict with each other, the compiler has made a composite section including the changes made by each chapter. See Amendment note below.

Amendments

The 1957 amendment by Ch. 16, in subdivision (2) added the words at the beginning thereof "Except as herein provided" and also added the 2 paragraphs of subsection (a) of subdivision (2).

The 1957 amendment by Ch. 100, added subdivision (11).

Repealing Clauses

Section 2 of Ch. 16, Laws 1957 and Sec. 2 of Ch. 100, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Special Nonresident Antelope and Deer Licenses (Laws 1957, Ch. 59)

An act authorizing the state fish and game commission to issue special nonresident antelope and special nonresident deer licenses, fixing the fees, and powers and duties under such licenses, providing that all acts and parts of acts in conflict herewith are hereby repealed; and providing an effective date.

Section 1. The state fish and game commission may issue special nonresident antelope licenses and special nonresident deer licenses as provided for in subsection 15 of section 26-104, Revised Codes of Montana, 1947, as amended. Such special licenses will be valid only for the area designated in the license, and shall expire annually on the thirtieth (30th) day of April. In certain areas where ten (10) or more written complaints from persons in the speical area involved, relating to the issuance of special nonresident deer and antelope permits have been received by the fish and game department a hearing at the county seat nearest to the area concerned must be held by representatives of the fish and game department where public protests will be heard. Notice of such hearing will be published in local newspapers and radio stations in the area concerned at least ten (10) days prior to the date of the hearing. The fee for a special nonresident deer license shall be twenty dollars ($20.00) and the fee for a special nonresident antelope license shall be twenty dollars ($20.00). Not more than one special nonresident deer license, and/or one special nonresident antelope license shall be issued in any one year to a nonresident. The tagging of game carcasses, as required by law, shall apply to all persons who purchased the special nonresident licenses herein provided. There shall be attached to each special nonresident antelope or deer license a permit which will authorize the holder thereof to ship or transport out of the state one (1) carcass of an animal for which such license was issued.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.
Section 3. This act shall be in full force and effect from and after its passage and approval until December 31, 1958. Approved March 1, 1957.

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

Section 26-401. Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.

26-401. (3722) **Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.** No person shall take, trap, shoot, kill, capture or attempt to take, trap, shoot, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell, ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors whether taken within or coming from without the state, except as hereinafter permitted.

Whenever beaver have increased in number to such an extent that in the judgment of the state fish and game commission the number of such beaver should be reduced, the commission shall have the authority to declare an open season on beaver under such rules and regulations as it shall prescribe; provided, however, that nothing herein contained shall authorize trapping on privately owned or leased lands, except with the approval of the landowner or lessee, or as hereinafter provided.

The state fish and game director may issue a permit to any bona fide owner or lessee of real estate which is being actually and materially damaged by beaver, to trap beaver on his own or leased premises only, and provided that the director shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be trapped under such permit. The fee for such permit shall be five dollars ($5.00). All applications for beaver permits shall be filed with the state fish and game director, between the dates of May first and September thirtieth of each year. The term "premises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game director shall in person or, by warden, examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game director shall properly care for all skins of beaver taken thereunder and as soon as cured shall send to the state fish and game warden residing in this county, or in event of such warden being absent or unable to act, then to the nearest warden from the place of the trapper's residence, and send to such officer an affidavit giving his name, residence, license or permit number, the date and place of capture, with the number so captured, together with fifty cents (50¢) for each skin, and if such officer is satisfied of the legal taking of the same, he shall thereupon immediately forward such affidavit with the money, and a report, to the state fish and game director, and upon the receipt thereof the state fish and game director shall forward to such warden numbered metal tags sufficient in number for one to be attached to each skin covered by the

affidavit; upon receipt of such tags the warden shall so attach them to the skins.

Any person who shall receive or bring into from without the state any beaver skin or skins duly tagged with a distinctive numbered metal tag of another state, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated on the tags, and the name of the state so tagging the same, and the same shall be accompanied by a fee of fifty cents (50¢), and it shall not be necessary for such skins to be retagged with a Montana tag, nor any other fees paid therefor.

The state fish and game director shall keep a record of all skins so reported.

Each metal tag shall remain attached to the beaver skin to which it was originally affixed until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skins, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached.

Beaver skins taken within the state under permit, and those coming from without the state, tagged as herein provided may be possessed, bought, sold or transported at any time within the state of Montana, but no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from the state fish and game director, which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of sixty cents (60¢) for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and consignee, the number and kind of skins contained therein, and the number of the shipping permit.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by section 26-324. Any beaver skin or skins taken or found in this state or which have been shipped out of this state except as specifically permitted by this section are being hereby declared contraband and shall be seized by the state fish and game director, warden or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game director at public auction in the state of Montana, after advertising at least fifteen (15) days prior to the date of sale, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire June first of each year and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section prior

to July first following, shall be subject to seizure and sale as herein provided.

History: En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 197, L. 1919; re-en. Sec. 3722, R. C. M. 1921; amd. Sec. 17, Ch. 77, L. 1923; amd. Sec. 19, Ch. 59, L. 1927; amd. Sec. 1, Ch. 167, L. 1935; amd. Sec. 15, Ch. 224, L. 1947; amd. Sec. 1, Ch. 153, L. 1953; amd. Sec. 1, Ch. 24, L. 1957.

Amendment

The 1957 amendment in the third paragraph decreased the permit fee from $10 to $5; deleted the words "for ten (10) or less number of beaver and one dollar ($1.00) per beaver for any number in excess of ten (10)" which appeared immediately after "five dollars ($5.00)"; deleted from the end of the fifth paragraph the words "and shall receive from the owner ten cents (10c) for each skin so tagged by him, the same to be for his services"; deleted a former 6th paragraph which read "A record of tags so issued shall be kept in the office of the state fish and game warden" and in the last paragraph substituted "June" for "May" and "July" for "June."

Repealing Clause

Section 2 of Ch. 24, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

26-1103. (3764) Repealed.

Repeal

This section (Sec. 1, Ch. 87, L. 1911; amd. Sec. 1, Ch. 124, L. 1915; re-en. Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 138, L. 1919; amd. Sec. 1, Ch. 80, L. 1925; amd. Sec. 29, Ch. 224, L. 1947), relating to the Gallatin preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1104. (3765) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 75, L. 1933), relating to the Snowy Mountain preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1106. (3767) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 3, L. 1949), relating to the Powder river game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1110. (3769) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 30, Ch. 224, L. 1947) relating to the Twin Buttes game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1112. (3771) Repealed.

Repeal

This section (Sec. 1, Ch. 109, L. 1917; re-en. Sec. 83, Ch. 173, L. 1917), relating to the South Moccasin mountain game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1114. (3773) Repealed.

Repeal

This section (Sec. 1, Ch. 114, L. 1921; amd. Sec. 31, Ch. 224, L. 1947), relating to the Blackleaf game and bird preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

TITLE 27—FOOD AND DRUGS

Chapter 3. State board of food distributors—regulation of food stores and food stuffs, 27-310.
4. Supervision of milk industry—state milk control board, 27-404.

CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOOD STUFFS

Section 27-310. Food stores—permits, offenses for failure to obtain.

27-310. Food stores—permits, offenses for failure to obtain. The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within the state. Upon the payment of a fee of five dollars ($5.00), the board shall issue a license and provide the insignia designating such store a "certified food store" by the state board of food distributors, to such persons as may be qualified by law to conduct a food store provided such license shall be exposed in a conspicuous place in the food store for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a food store unless such license has been issued to him by the board.

History: En. Sec. 10, Ch. 49, L. 1939; amd. Sec. 1, Ch. 93, L. 1957.

Amendment

The 1957 amendment increased the license fee for a certified food store from $2.00 to $5.00.

Repealing Clause

Section 2 of Ch. 93, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—SUPERVISION OF MILK INDUSTRY—STATE MILK CONTROL BOARD

Section 27-404. Milk control board.

27-404. Milk control board. There is hereby constituted a milk control board to consist of the executive officer of the Montana livestock sanitary board, as chairman, who shall serve in ex officio capacity without compensation except for necessary expenses while engaged with the duties of the board, and six (6) members, who shall be appointed by the governor with the following qualifications: Two (2) persons who are "consumers" and who are not otherwise engaged in the milk business, two (2) persons who are "producers" selling to a distributor, two (2) persons who are "distributors." The four (4) persons appointed from the industry shall be selected from a market or markets designated and established by the board.

One (1) producer, one (1) distributor and one (1) consumer member shall be appointed each for a two (2) year term; one (1) producer, one (1) distributor, and one (1) consumer member shall be appointed each for a four (4) year term; and at the expiration of such terms all future appointments shall be for terms of four (4) years. Any vacancy shall be filled by

appointment by the governor for the unexpired term. Four (4) members of the board shall constitute a quorum for the regular transaction of business.

The compensation of the appointed members of the board shall be fixed at fifteen dollars ($15.00) per day for each day actually engaged in the official functions of the board plus subsistence and necessary traveling expenses at the rate allowed other state employees.

The board may employ necessary assistants and appoint agents and instrumentalities but all expenditure under this act shall be paid from the receipts hereunder.

The board shall have the power and it shall be its duty to designate an executive secretary who shall serve under the direction and at the pleasure of the board and who shall have charge of the administration of the board's orders, rules, and regulations, and who shall also serve as financial officer of the board and who shall be authorized to accept or receive money paid or to be paid to the board, either as license fees or fines as provided by this act. Such person shall, before he enters upon the discharge of his duties, execute and file a bond, in such amount as may be fixed by the board, as may be provided by law for public officers.

Meetings of the board shall be had at least every sixty (60) days at the call of the executive secretary. The salary of the secretary is to be fixed by the board and the state board of examiners. The board shall so enforce the act that there shall be no discrimination against any dealer or consumer.

History: En. Sec. 4, Ch. 204, L. 1939; amd. Sec. 1, Ch. 249, L. 1957.

Amendment

The 1957 amendment made numerous changes and additions in this section. For section prior to amendment see parent volume.

Effective Date

Section 2 of Ch. 249, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

REVISED CODES OF MONTANA

VOLUME 3

1957 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 3 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3 THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 3

For index see pocket supplement to Volume 9

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MONTANA REVISED CODES

TITLE 28—FORESTS AND FORESTRY

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4. Disposal of slashings and forest debris, 28-402.
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CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

Section 28-103. Definitions.
28-109. Duty of owner of classified forest land.
28-119. Sawdust piles—restriction.

28-103. Definitions. Organized forest protection district is defined as a definite forest land area, the boundaries of which are fixed, and wherein, through the medium of an agency recognized by the board, the forest land owners, whether state, county, municipal or private, pay the actual cost of fire protection and fire suppression on a pro-rata basis for acreage owned within the district.

Fire district is defined as a subdivision of an organized forest protection district, or a forest area outside the boundaries of an organized forest protection district, but adjacent thereto and which can be made a part thereof.

Recognized agency is defined as an association of owners of forest lands in an organized forest protection district, organized for the purpose of providing forest protection and fire suppression in such district and financed by the owners in said district, and recognized by the board as giving adequate fire protection to such forest lands in accordance with rules and regulations prescribed by the board. Any public agency administering and protecting forest lands may also be recognized by the board as such an agency.

Forest fire season is defined as the period of each year beginning on May first and ending on September thirtieth, inclusive; provided, however, that in the event of excessive or great fire danger, the board may expand the said season within any district, or in any part thereof, for not more than sixty (60) extra days, and when so expanded the board shall give such public notice thereof as it may deem necessary.

Forest protection is defined as the work of prevention, detection and suppression of fire in forest material or on forest land.

Owner is defined as the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right-of-way, or mineral reservation.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955.

Amendment

The 1955 amendment deleted from the beginning of this section an introductory statement which read "The following words and phrases used in this act are hereby defined:" and in the paragraph defining "Forest fire season" increased the period of time the board may expand for the fire season from 30 to 60 extra days.

28-109. Duty of owner of classified forest land. Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost of not less than one cent (1c) or more than eight (8c) cents per acre per annum, and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act; provided, that for the purposes of this section, any legal subdivision of not more than one hundred sixty (160) acres of forest land classified as such by the board, to be designated by the owner, shall be deemed by the board to be protected by the owner if more than one-half (½) thereof is within the radius of one (1) mile of a permanent habitation occupied throughout the fire season either by the owner or by someone under the owner's direction, and provided further that the starting, existence and spread of fire on said designated legal subdivision, without immediate and reasonable measures for suppression being taken by said owner or under his direction, shall be prima facie evidence that protection is not being furnished by said owner, and the board shall thereupon provide protection and suppression in accordance with the provisions of this section.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955.

Amendment

The 1955 amendment substituted "eight (8¢) cents" for "five cents (5¢)."

Effective Date

Section 2 of Ch. 188, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

28-119. Sawdust piles—restriction. No sawmill located within or contiguous to forest lands shall accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of saw logs, provided, however, that a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the state forester. Each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with regulations issued by the board of forestry.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955.

Amendment

The 1955 amendment inserted the words "and burned" in the last sentence.

Effective Date

Section 2 of Ch. 222, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

CHAPTER 4—DISPOSAL OF SLASHINGS AND FOREST DEBRIS

Section 28-402. Disposal of slashings.

28-402. (2778.6) **Disposal of slashings.** Every person, firm or corporation, hereinafter called the operator, who shall hereafter, for commercial purposes, cut any timber, logs, trees, posts, ties, poles, cordwood, pulpwood or any other forest product upon any lands within the state of Montana, shall remove any forest fire hazard to the property of others that may be created by the slashings, or other forest debris incident to such cutting operations. Provided, however, that an expenditure in excess of seventy-five cents (75c) for each one thousand (1,000) feet log scale, or the equivalent thereof if products other than logs are cut, shall not be required. Slash and debris will be disposed of during the cutting operations or as soon thereafter as is practical. Provided, however, that any fire hazard to the property of others created by said slash and debris shall under no conditions be allowed to remain for more than eighteen (18) months in any portion of the cutting area except with written permission of the state forester. If and when the operator has satisfactorily disposed of said slash or debris in accordance with the law and the rules and regulations of the state board of forestry he will be so notified, in writing, by the state forester.

Any operator, as defined herein, may elect to have said slash and debris, incident to his cutting operations treated, protected or disposed of by the state forester under the rules and regulations of the state board of forestry. Said operator will deposit with the state forester the estimated costs of such disposal at such times and in such amounts as the state forester may direct, but in no event shall such deposit or payment exceed, in the aggregate, an amount equal to seventy-five cents (75c), multiplied by the number of thousand of feet log scale cut from the forest area involved. The state forester will refund to said operator all sums deposited over and above costs of slash and debris treatment, protection or disposal.

Each person, firm or corporation, hereinafter called the purchaser, who shall hereafter purchase or contract to purchase any timbers, logs, ties, posts, poles or other forest products cut from any forest lands within the state of Montana, shall within five (5) days after making said purchase or contract to purchase, notify the state forester of such purchase or contract together with the name of the person furnishing said forest products and the name of the owner of the land from which said products are cut. Each purchaser shall withhold, before making payment for such products a sum equal to seventy-five cents (75c) for each thousand (1,000) feet log scale or the equivalent thereof if forest products other than logs are to be cut under such contract, unless the state forester has notified said purchaser that slash and debris from the cutting operator furnishing the forest products has been disposed of, or that the cutting operator has complied with the law. When the state forester is satisfied that said slash and debris, creating a fire hazard to the property of others, has been or will be legally treated, protected or disposed of by the cutting operator in accordance with the requirements of law and of the rules and regulations of the state board of forestry, he will release said money withheld

by purchaser to insure compliance with the law. If, on or before the conclusion of said purchase or contract to purchase, the state forester has not released said withheld moneys the purchaser shall, upon demand, immediately remit the moneys withheld to the state forester. The state forester will issue receipt, therefore, to the purchaser. Said receipt shall discharge the purchaser from any and all liability for moneys withheld from cutting operator in the amounts shown by said receipt. The state forester shall retain such moneys as a surety covering treatment, protection or removal of said slash and debris or may, at his discretion procure the treatment, protection or disposal of said slash and debris by applying said money, or so much thereof as may be necessary in payment of the costs of such abatement.

History: En. Sec. 6, Ch. 95, L. 1927; amd. Sec. 1, Ch. 81, L. 1931; amd. Sec. 1, Ch. 34, L. 1941; amd. Sec. 1, Ch. 83, L. 1949; amd. Sec. 1, Ch. 18, L. 1953; amd. Sec. 1, Ch. 230, L. 1955.

Amendment

The 1955 amendment substituted "timbers" for "timber" and deleted the word "trees" which appeared after the word "logs" near the beginning of the third paragraph.

CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

Section 28-603. Powers of board.

28-603. Powers of board. (1) Boards of county commissioners may in their discretion establish fire seasons annually during which no person shall ignite or set any forest fire, or slash burning fire, or land clearing fire, or debris burning fire, or any open fire, within any forest, range or crop lands, subject to the provisions of this act, without having obtained an official written permit to ignite or set such fire from a county rural fire chief or from a district rural fire chief authorized by the board to issue such permits for such lands;

(2) Any person who shall ignite or set any forest fire, or slash burning fire, or land clearing fire, or debris burning fire, or any open fire, within any forest, range or crop land subject to the provisions of this act without first having obtained a written permit to ignite or set such fire shall be guilty of a misdemeanor;

(3) To augment rural crews in case of serious emergency the boards may provide for the organization and training of voluntary urban fire crews to be used in rural areas;

(4) Any county rural fire chief and/or district rural fire chief may enter private property either with or without fire control crews for the purpose of suppressing fires, and are exempt from any damage resulting from such activity;

(5) The board is authorized to appropriate from the general fund of the county not to exceed five thousand dollars ($5,000.00) per year for the purchase, care and maintenance of fire fighting equipment, or for the payment of wages to skilled operators of heavy mechanized equipment in the suppression of fires when deemed necessary; or if the general fund is budgeted to the full limit, the board may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment

will be necessary to raise such needed sum not to exceed five thousand dollars ($5,000.00).

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955.

Amendment

The 1955 amendment in subd. (5) raised the appropriation from $2,500 to $5,000.

Repealing Clause

Section 2 of Ch. 40, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 40, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

TITLE 31—HIGHWAY PATROL

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CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION—POWERS AND DUTIES

Section 31-104. Supervisor—term—salary—supervisory power—resident requirement.
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31-145. When court to forward license to board and report convictions.
31-146. Mandatory revocation of license by board or supervisor upon proper authority.
31-149. Period of suspension or revocation.

31-104. Supervisor—term—salary—supervisory power—resident requirement. The board shall select a highway patrol supervisor who shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary of seven thousand dollars ($7,000.00) per annum, and necessary traveling expenses. The supervisor shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as supervisor shall have been a continuous resident of Montana for at least five (5) years. The supervisor, with the approval of the board and within the limits of any appropriation made available for such purposes, shall for such Montana highway patrol:

1. Designate the authority and responsibility in each such rank, grade and position;

2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;

3. Prescribe the official uniform of the Montana highway patrol;

4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;

6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any employee of the department;

7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential for the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957.

Amendment

The 1957 amendment increased the salary of the superintendent from $6,000 to $7,000 per annum and added all that portion of this section beginning with the sentence "The supervisor, with the approval of the board and within the limits

of any appropriation made available for such purposes, shall for such Montana highway patrol:" which introduces new subdivisions 1 to 7.

Repealing Clause

Section 2 of Ch. 102, Laws 1957, repealed all acts and parts of acts in conflict therewith.

31-105. Qualifications of patrolmen—salary—probationary training—discharge—demotion—suspension—hearing. The board shall designate captains, not to exceed five (5) in number, sergeants, and patrolmen in such numbers as the board may deem necessary. Said patrolmen shall be chosen in equal numbers in the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts. Replacements and additions to the force shall be selected in the same manner. The salary of the captains, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners, provided that the base salary for the captains shall be four hundred and twenty-five dollars ($425.00) per month, the base salary for sergeants shall be four hundred dollars ($400.00) per month, the base salary for patrolmen shall be three hundred and seventy-five dollars ($375.00) per month, the base salary for probationary patrolmen shall be three hundred dollars ($300.00) per month. In the event that said probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service. Captains and sergeants shall be selected from the patrolmen by the supervisor, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains and sergeants shall be outlined, defined and under the control of the supervisor, subject to the approval of the Montana highway patrol board.

(a) Patrolmen shall possess the following qualifications:

1. Sound and active physical and mental condition.
2. Good moral character.
3. Resident of Montana for at least five (5) years last past.
4. Pass a satisfactory test in the operation of automobiles.
5. Not over fifty-five per cent (55%) of the patrol shall belong to one political party.
6. Citizen of the United States and state of Montana.

For the purposes of this act, the supervisor, captains, sergeants and patrolmen shall all be deemed patrolmen. The Montana highway patrol board shall prepare a schedule of compensation and expenses for all patrolmen and submit it to the state board of examiners for their approval, in conformity with this act. All patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol supervisor must recommend to the highway patrol board for permanent appointments or the patrolmen will automatically be dismissed. All captains and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol supervisor must recommend to the highway patrol board for permanent appointments or the captains and sergeants will automatically revert to their previous

ranks without prejudice. Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall, on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

Every person employed or appointed and designated as a supervisor, captain, sergeant, or patrolman under and pursuant to the provisions of this act, except as above provided, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one or more of the causes specified in the following paragraph.

(b) Cause for suspension, demotion, or discharge will be:

1. Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

2. Gross neglect of duty or wilful violation or disobedience of orders or regulations.

3. Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

4. Conduct unbecoming an officer.

5. Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

6. Sleeping while on duty.

7. Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

8. Gross inefficiency in performing duties.

9. Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.

10. Wilful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

The charge or charges against any such employee shall be made in writing and shall be signed and sworn to by the person making the same, which written charge or charges shall be filed with the supervisor of the Montana highway patrol. Any charges involving suspension or dismissal of the supervisor or a captain shall be filed directly with the highway patrol board.

Upon the filing of the same, if the supervisor, in his opinion, believes that such charges constitute grounds for discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing, otherwise he shall dismiss such charges.

(c) At least ten (10) days before the time appointed for said hearing, written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges shall be served on the said employee personally, if his whereabouts is known, in the state of Montana. If at the time, the whereabouts of the said employee is unknown,

or if he be outside of the state of Montana, service may be made upon him by mailing the said written notice to him at his last known place of residence in Montana.

If the supervisor orders a hearing he may suspend such employee pending the rendition of the decision made in such case.

The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

The employee accused shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing. The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the supervisor and with the employee accused also.

If, after such hearing, the highway patrol board finds that any such charge or charges made against the employee are true, it may punish the offending party by reprimand, suspension without pay, demotion, or dismissal.

(d) Any employee who is so suspended, demoted, or dismissed may have a right of appeal to the district court of Lewis and Clark county, within ten (10) days after such decision or determination of the highway patrol board, and said court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court. If such decision or determination of the highway patrol board shall be finally reversed or modified by said court, the said employee shall be reinstated in his position and the highway patrol board shall pay to the said employee any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

The highway patrol board shall have the authority to order the supervisor to file charges with the board if the supervisor in his judgment does not believe the charge or charges warrant a hearing.

When the highway patrol supervisor has cause to believe that any member of the highway patrol has violated any of the hereinabove specified grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member. Suspension shall be without pay and for a period not to exceed twenty (20) days in time. In cases of demotion, the member shall receive the pay of the classification to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957.

Amendments

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

The 1957 amendment deleted the words "not to exceed nine (9) in number" which appeared after the word "sergeants" in the first sentence; deleted the provisions relating to the supervisor's salary; raised all the base salaries by $25 per month; deleted the words "with three (3) years' service" in the provision providing for patrolmen's base salaries; deleted a proviso which read "provided however, that the maximum increase allowable by said board shall not exceed five per cent (5%) of said base salaries;" changed the provision regarding the salary of probationary patrolman who is appointed permanently; added the sentence "These salaries shall be increased one per cent (1%) per year for each additional year of service" and added subd. 10 in subsec. (b).

Repealing Clauses

Section 2 of Ch. 268, Laws 1955 and Sec. 2 of Ch. 225, Laws 1957 repealed all acts and parts of acts in conflict therewith.

31-106. Equipment of patrolmen. The highway patrol board shall furnish patrolmen with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The patrol board shall furnish all patrolmen with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts: provided that any such equipment and uniforms shall remain the property of the state of Montana: provided further, that the said board shall have authority to destroy, sell, or dispose of any and all obsolete equipment or uniforms or parts thereof, and any moneys received therefrom shall be paid into the state general fund.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 31, Laws 1955 repealed all acts and parts of acts in conflict therewith.

31-107. Repealed.

Repeal

This section (Sec. 7, Ch. 199, L. 1943; amd. Sec. 1, Ch. 94, L. 1949), relating to speed limits was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955. For new provisions, see secs. 32-2144 to 32-2150.

31-108, 31-109. Repealed.

Repeal

These sections (Secs. 8, 9, Ch. 199, L. 1943; amd. Sec. 1, Ch. 118, L. 1949), relating to criminal acts on highways and penalties therefor, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

31-117. Drivers' examination section of highway patrol. There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, and as many assistant chief examiners, and examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, assistant chief examiners, and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as a captain, the assistant

chief examiners shall rank as sergeants, and the examiners shall rank as patrolmen.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957.

Amendment

The 1957 amendment in the last sentence of the first paragraph substituted the words "and as many assistant chief examiners, and examiners" for the words "an assistant chief examiner, and as many examiners" and in the second paragraph changed the rank of chief examiner from assistant supervisor to captain.

Repealing Clause

Section 2 of Ch. 101, Laws 1957 repealed all acts or parts of acts in conflict therewith.

31-125. Operators and chauffeurs must be licensed. (a) No person, except those hereinafter expressly exempted, under section 31-126, Revised Codes of Montana, 1947, as amended by section 1, chapter 95, Laws of 1955, shall drive any motor vehicle upon a highway in this state unless such person has a valid Montana license as an operator or chauffeur under the provisions of this act. No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur's license. No person shall receive a chauffeur's license unless and until he surrenders to the board any operator's license issued to him or an affidavit that he does not possess an operator's license.

(b) Any person holding a valid chauffeur's license hereunder need not procure an operator's license.

(c) Whenever a city or town requires an operator or chauffeur to obtain a local driving license or permit, such a license or permit shall not be issued unless applicant therefore presents a state driver's license valid under the provisions of this act.

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957.

Amendment

The 1957 amendment in subd. (a) added the words "under section 31-126, Revised Codes of Montana, 1947, as amended by section 1, chapter 95, Laws of 1955," and inserted "Montana" before the word "license."

Repealing Clause

Section 2 of Ch. 79, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 79, Laws 1957 provided the act should be in effect from and after July 1, 1957.

31-126. What persons are exempt from license. The following persons are exempt from license hereunder:

1. Any person while operating a motor vehicle in the service of the Army, Navy, or Marine Corps of the United States;

2. Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;

3. A nonresident who is at least fifteen (15) years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator;

4. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to

chauffeurs in this state except that any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this state;

5. Any nonresident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident.

6. A driver's license issued hereunder to any person who enters the United States armed forces, if valid and in force and effect at the time such person enters the service, shall continue in full force and effect so long as such service shall continue unless such license is sooner suspended, revoked or cancelled for a cause as provided by law, and for not to exceed thirty (30) days following the date on which holder of such driver's license is honorably separated from such service. During said thirty (30) day period, such license shall be valid only when in the immediate possession of the licensee while driving and the licensee has his discharge, separation, leave or furlough papers in his immediate possession.

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955.

Amendment

The 1955 amendment added subd. 6.

Repealing Clause

Section 2 of Ch. 95, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 95, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

31-127. What persons shall not be licensed. The board shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of fifteen (15) years, except that the board may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2. To any person, as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of eighteen (18) years, nor to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of twenty-one (21) years;

3. To any person, as an operator or chauffeur, whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in section 31-149;

4. To any person, as an operator or chauffeur, who is an habitual drunkard, or is addicted to the use of narcotic drugs;

5. To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

6. To any person, as an operator or chauffeur, who is required by this act to take an examination, unless such person shall have successfully passed such examination;

7. To any person who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

8. To any person as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic: provided that the board may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a period of two (2) years and when recommended by the state health officer as being controlled medically or otherwise to the degree that the affliction will not interfere with the safe operation of a motor vehicle.

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955.

Amendment

The 1955 amendment added subd. 8.

Repealing Clause

Section 2 of Ch. 60, Laws 1955 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 60, Laws 1955 provided the act should be in effect from and after July 1, 1955.

Cross-Reference

Reports of persons subject to epileptic type seizures, sec. 69-127.

31-145. When court to forward license to board and report convictions. (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the board, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon forward said license to the board and at the same time forward a record of such conviction to the board, providing that if such person does not possess a driver's license the court shall so indicate in its report to the board.

(b) Every court having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward to the board a record of the conviction of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted.

(c) For the purposes of this act the term "conviction" shall mean a final conviction. Also, for the purposes of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be reported to the board by the court having jurisdiction.

(d) Any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license, such period of revocation shall commence from date of conviction or forfeiture of bail.

History: En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957.

Amendment

The 1957 amendment in subd. (a) inserted the period after the word "convicted" and substituted the sentence beginning "The court shall thereupon forward said license * * *" for the words "and the court shall thereupon forward said licenses to the board and at the same time forward a record of such conviction to the board and to the registrar of motor vehicles" and added subd. (d).

Repealing Clause

Section 2 of Ch. 165, Laws 1957 repealed all acts or parts of acts in conflict therewith.

31-146. Mandatory revocation of license by board or supervisor upon proper authority. The board or supervisor upon proper authority shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

1. Manslaughter resulting from the operation of a motor vehicle;

2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug or a combination thereof;

3. Any felony in the commission of which a motor vehicle is used;

4. Failure to stop and render aid as required under the laws of this state in the event of a motor-vehicle accident resulting in the death or personal injury of another;

5. Perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law relating to the ownership or operation of motor vehicles;

6. Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months.

History: En Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957.

Amendment

The 1957 amendment in the first sentence inserted the words "or supervisor upon proper authority" and in subd. (2) substituted the words "or narcotic drug or a combination thereof" for the words "a narcotic drug."

Repealing Clause

Section 2 of Ch. 192, Laws 1957 repealed all acts or parts of acts in conflict therewith.

31-149. Period of suspension or revocation. (a) The board shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under section 31-155 and section 32-1202, Revised Codes of Montana, 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of one (1) year from the date of such revocation, such person may make application for a new license as provided by law, but the board shall not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways.

History: En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957.

Amendment

The 1957 amendment added "and section 32-1202, Revised Codes of Montana, 1947" to subd. (a) and in subd. (b) in the exception clause substituted the words "of such revocation" for the words "on which the revoked license was surrendered to and received by the board."

Repealing Clause

Section 2 of Ch. 126, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

Section 31-201. Definitions.
31-203. Montana highway patrolmen's retirement board.
31-206. Rules and regulations—actuarial data.
31-208. Service allowance.
31-209. Payments by contributors.
31-210. Contributions by the state of Montana.
31-212. Voluntary retirement.
31-215. Involuntary retirement allowance.
31-216. Compulsory retirement allowance.
31-217. Refunds in case of resignation or discharge.
31-218. Payments upon death.
31-219. Payments in case of death from natural causes.
31-223. Service in the armed forces of the United States.
31-228. Optional retirement allowance.
31-229. Separability of provisions.
31-230. Dormant savings accounts—transfer—subsequent re-entry to membership.

31-201. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Fund," the Montana highway patrolmen's retirement fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955.

Amendment

The 1955 amendment substituted the present definition of "Beneficiary" for one which read "Beneficiary, any person in receipt of a retirement allowance under this act"; in the definition of "Final salary" substituted "for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years," for "for the five years of service immediately preceding retirement, or, in the event a member has not served five years" and added the definitions of "Retired patrolman," and "actuarial equivalent."

31-203. Montana highway patrolmen's retirement board. There is hereby established the Montana highway patrolmen's retirement board, which shall consist of five (5) members, who shall be the chairman of the Montana highway patrol board, the supervisor of the Montana highway patrol, and three (3) members of the Montana highway patrolmen's association. Immediately after the passage and approval of this act, the Montana highway patrolmen's association shall elect one (1) member whose term of office shall expire July 1, 1956, another member whose term of office shall expire on July 1, 1957, and another member whose term of office shall expire on July 1, 1958, and their successors shall be elected for a term of three (3) years, except that any person appointed to fill a vacancy shall be eligible for election. The secretary and attorney of the Montana highway patrol board shall be members ex-officio.

History: En. Sec. 3, Ch. 37, L. 1945; amd. Sec. 2, Ch. 243, L. 1955.

Amendment

The 1955 amendment deleted from the first sentence the words "the attorney for the Montana highway patrol" which appeared between the words "patrol" and "and," substituted "three (3)" for "two (2)" and deleted from the end of said sentence the words "to be annually elected by the said association" added the second sentence and in the last sentence inserted the words "and attorney" and substituted the words "be members ex-officio" for the words "act as secretary of the board."

31-206. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience

of the contributors to and the beneficiaries of the fund, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955.

Amendment

The 1955 amendment completely rewrote the first sentence. Before amendment it read "The board shall, from time to time, establish such rules and regulations for the administration of this act as may be deemed necessary."

31-208. Service allowance. In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the patrol including service rendered prior to July 1, 1945, upon complying with the provisions of this act. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1945. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor. The time during which a contributor is absent from service without pay shall not be counted in computing the service of a contributor except service with the armed forces of the United States in time of war.

History: En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955.

Amendment

The 1955 amendment substituted "except service with the armed forces of the United States in time of war" for "unless approved by the board" in the last sentence.

31-209. Payments by contributors. Every member shall be required to contribute into the fund a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the fund shall cease.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955.

Amendment

The 1955 amendment substituted "five per cent (5%)" for "three and one-half per cent (3½%)," substituted a comma for a period which appeared after the words "credited to his account in the fund" and deleted the words "Every member who was in the employ of the Montana highway patrol prior to July 1, 1945, shall have the option and he may elect to make back payments to the date when he first entered the service of the Montana highway patrol. Such back payments may be spread over a period of two (2) years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by twenty-four (24), which deduction increase shall be credited to such back payments owing and shall be continued until the full amount of such back payments shall have been completed. Any such deduction increase may be anticipated in part or in full by the contributor at any time and must be anticipated in full at the time of retirement before a retirement allowance is granted, and if not so anticipated and paid in full then a member's annuity shall be calculated on the total accumulated deductions standing to his credit in the fund, and the state annuity shall be reduced in proportion to the reduction which occurs in the member's annuity due to the amount of back payments not so anticipated. Every contributor who shall elect to make such back payments shall receive full credit under this act for all contributions made into the fund and for all service credits to which he might thereby be entitled."

31-210. Contributions by the state of Montana. The state of Montana shall annually contribute to the fund fifteen per cent (15%) of all moneys

received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955.

Amendment

The 1955 amendment substituted "fifteen per cent (15%)" for "ten per cent (10%)" and "under the laws of the state of Montana" for "in section 31-111 for a period of ten (10) years from and after July 1, 1945. But not to exceed seven and one-half (7½¢) cents for each such license sold, in the event the present fee should be raised in the ensuing ten (10) years."

31-212. Voluntary retirement. If a contributor has served twenty (20) years of creditable service with the Montana highway patrol, he is hereby granted the option and privilege of retiring and in such case, his retirement allowance shall be proportionately reduced.

History: En. Sec. 12, Ch. 37, L. 1945; amd. Sec. 7, Ch. 243, L. 1955.

Amendment

The 1955 amendment deleted the words "on an actuarial basis" which appeared at the end of this section.

31-215. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 15, Ch. 37, L. 1945; amd. Sec. 8, Ch. 243, L. 1955.

Amendment

The 1955 amendment inserted the words "the actuarial equivalent of" after the word "plus" in subd. (b).

31-216. Compulsory retirement allowance. Any member, regardless of his years of service, who has attained the age of sixty (60) years, shall forthwith be retired. If he shall have served twenty-five (25) years or more, he shall receive the full retirement allowance as provided herein. If he shall have served less than twenty-five (25) years, he shall be entitled to the same options as provided in section 31-215, as amended.

History: En. Sec. 16, Ch. 37, L. 1945; amd. Sec. 9, Ch. 243, L. 1955.

Amendment

The 1955 amendment added the words "as amended" at the end of this section.

31-217. Refunds in case of resignation or discharge. Where a contributor resigns of his own volition, or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 17, Ch. 37, L. 1945; amd. Sec. 2, Ch. 109, L. 1947; amd. Sec. 10, Ch. 243, L. 1955.

Amendment

The 1955 amendment deleted the words "seventy-five per cent (75%) of the accumulated" which appeared after the word "then" and inserted the word "the" before the word "deductions."

31-218. Payments upon death. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary.

Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to fifty per cent (50%) of the final salary of the contributor, less the amount which is paid to any such beneficiary under the workmen's compensation act of the state of Montana, during the period such compensation is paid or payable.

History: En. Sec. 18, Ch. 37, L. 1945; amd. Sec. 11, Ch. 243, L. 1955.

Amendment

The 1955 amendment in the first paragraph substituted the word "beneficiary" for the words "widow so long as she remains his widow and if and when such widow dies or remarries, then to his children under eighteen (18) years of age while they are under eighteen (18) years of age, and if and when there are no children under eighteen (18) years of age, then to the member's parent or parents if they are dependent"; in the second paragraph inserted the words "the actuarial equivalent of" immediately after "(b)" and the words "which when added to the member's annuity will provide a total annuity" after the words "a state annuity" and substituted the word "beneficiary" for the words "widow or children or dependent parent or parents."

31-219. Payments in case of death from natural causes. (a) If the retired patrolman dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary. (b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 31-215, as amended.

History: En. Sec. 19, Ch. 37, L. 1945; amd. Sec. 12, Ch. 243, L. 1955.

Amendment

The 1955 amendment in subd. (a) substituted the words "retired patrolman" for "beneficiary" and substituted the word "beneficiary" both times it appears in this section for the words "legal representatives or to such person having an insurable interest in his life as he shall nominate by written designation duly acknowledged and filed with the board"; in subd. (b) substituted the words "the actuarial equivalent of the options" for "either of the two options" and inserted the words "as amended" after "section 31-215."

31-223. Service in the armed forces of the United States. Any member of the Montana highway patrol now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the fund; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana highway patrol, and such repayments must be made within two (2) years after his return to the patrol provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955.

Amendment

The 1955 amendment deleted the words "in the same manner as provided in section 31-209" which appeared between the words "patrol" and "provided."

31-228. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 2. Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: Section 31-228 added by Sec. 14, Ch. 243, L. 1955.

31-229. Separability of provisions. The provisions of this act are severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions. It is hereby declared to [be] the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

History: Section 31-229 added by Sec. 14, Ch. 243, L. 1955.

Compiler's Note

The bracketed word "be" was inserted by the compiler.

31-230. Dormant savings accounts—transfer—subsequent re-entry to membership. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years; provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: Section 31-230 added by Sec. 14, Ch. 243, L. 1955.

Repealing Clause

Section 15 of Ch. 243, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 16 of Ch. 243, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

Chapter 3. Supervision of public highways, 32-302, 32-314.
7. Public bridges, 32-713 to 32-716.
8. Guide-boards, Repealed—Section 158, Chapter 263, Laws of 1955.
11. Speed and traffic regulations, 32-1123, 32-1127.
16. State highway commission and highway engineer—powers and duties, 32-1608, 32-1622 to 32-1625.
20. Controlled access highways, 32-2001 to 32-2010.
21. Uniform act regulating traffic on highways, 32-2101 to 32-21-160.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

Section 32-302. Powers and duties of county commissioners respecting highways.
32-314. Inspection of highways and construction work—compensation.

32-302. (1622) **Powers and duties of county commissioners respecting highways:** The boards of county commissioners of the several counties of the state have general supervision over the highways within their respective counties.

1 to 11. * * * [Subdivisions 1 to 11, same as parent volume.]

12. The county commissioners of any county may, in their discretion, whenever highway construction work is to be financed in whole or in part by federal funds, and the secretary of commerce of the United States of America shall affirmatively find that under the circumstances relating to a given project some other method than competitive bidding is in the public interest, may in the construction of farm to market roads, also designated as secondary and feeder roads, enter into and contract jointly or independently with either the Montana state highway commission, the United States bureau of public roads, or any other federal agency heretofore established or which may be hereafter established, to acquire rights of way, survey, construct, and do any other thing essential and practical in securing such roads by force account, unit price or otherwise as may be agreed upon by said state highway commission and said board of county commissioners.

History: En. Sec. 2, Ch. 3, Ch. 172, L. 1913; amd. Sec. 2, Ch. 3, Ch. 141, L. 1915; amd. Sec. 2, Ch. 3, Ch. 172, L. 1917; amd. Sec. 1, Ch. 15, Ex. L. 1919; re-en. Sec. 1622, R. C. M. 1921; amd. Sec. 1, Ch. 128, L. 1925; amd. Sec. 1, Ch. 59, L. 1929; amd. Sec. 1, Ch. 102, L. 1947; amd. Sec. 1, Ch. 109, L. 1955. Cal. Pol. C. Secs. 2641-2643.

Amendment

The 1955 amendment added subd. 12.

Repealing Clause

Section 2 of Ch. 109, Laws 1955 repealed all acts or parts of acts in conflict therewith.

32-314. (1632) **Inspection of highways and construction work—compensation.** The board of county commissioners may direct the county surveyor or some member or members of said board, to inspect the condition of any highway or highways or proposed highway or any work, contract or otherwise, under the direction, supervision or control of the county officials, being done or completed on any highway or bridge in the county during the progress of the work or before any work is commenced, or after completion and before payment therefor, and such person or per-

sons making such inspection shall receive for making such inspection when so directed the sum of fifteen dollars ($15.00) per day and actual expense, which shall be audited and allowed in the same manner as other claims against the county.

History: Ap. p. Sec. 1805, 5th Div. Comp. Stat. 1887; amd. Secs. 2740-2741, Pol. C. 1895; amd. Secs. 51-52, Ch. 44, L. 1903; amd. Secs. 1-2, Ch. 76, L. 1905; re-en. Secs. 1387-1388, Rev. C. 1907; amd. Secs. 12-13, Ch. 3, Ch. 72, L. 1913; amd. Secs. 12-13, Ch. 3, Ch. 141, L. 1915; amd. Sec. 1, Ch. 106, L. 1917; amd. Sec. 12, Ch. 3, Ch. 172, L. 1917; amd. Sec. 4, Ch. 15, Ex. L. 1919; re-en. Sec. 1632, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1929; amd. Sec. 1, Ch. 84, L. 1953; amd. Sec. 1, Ch. 116, L. 1957.

Amendment

The 1957 amendment raised the inspection fee from $12 to $15.

Repealing Clause

Section 2 of Ch. 116, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—PUBLIC BRIDGES

Section 32-713. Construction or reconstruction of bridges.
32-714. Expending of funds—when authorized—resolution.
32-715. Allotment—when made.
32-716. Deduction of allotment from future regular apportionments to the particular financial district.

32-713. Construction or reconstruction of bridges. The state highway commission is hereby authorized to allocate from available state construction moneys for the federal aid highway system a sum of one million dollars ($1,000,000.00), or so much thereof as may be necessary, in any fiscal year for the construction or reconstruction of any major bridge or bridges on the state primary or secondary highway system when the construction or reconstruction of any such bridge or bridges would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts if regularly apportioned funds were used.

History: En. Sec. 1, Ch. 106, L. 1955; amd. Sec. 1, Ch. 35, L. 1957.

Title of Act

An act to provide for the reconstruction of major bridges on the designated primary highways of the state of Montana; providing that the highway commission must adopt a resolution as a prerequisite to expenditure; and authorizing the state highway commission to allocate funds for such purposes prior to apportionment to the financial district; providing that any such expenditure shall be deducted from future apportionments to the financial district; and repealing all acts and parts of acts in conflict herewith.

Amendment

The 1957 amendment inserted the words "construction or" before the word "reconstruction" both times they appear and also inserted the words "or secondary" which appear between the words "primary" and "highway."

32-714. Expending of funds—when authorized—resolution. The allotment of funds under this act may be expended by the state highway commission on primary bridges where the engineer's estimate of cost of construction or reconstruction is in excess of the sum of five hundred thousand dollars ($500,000.00), and on secondary bridges where the engineer's estimate of cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal aid secondary system to the county or counties for a period of three (3) years, but only when the state highway commission by resolution, as part of its finding of public necessity, declares that a bridge

should be constructed or reconstructed on a designated portion of the state primary or secondary highway.

History: En. Sec. 2, Ch. 106, L. 1955; amd. Sec. 2, Ch. 35, L. 1957.

Amendment

The 1957 amendment made substantial changes in this section. Prior to amendment it read "The allotment of funds under this act may be expended by the state highway commission only on bridges where the engineer's estimate of cost of reconstruction is in excess of the sum of five hundred thousand dollars ($500,000.00) but only when the state highway commission by resolution, as part of its finding of public necessity, declares that a bridge should be reconstructed on a designated portion of the state primary highway."

32-715. Allotment—when made. The allotment of such funds shall be made from available state construction moneys before apportionment to the financial district in accordance with section 84-1817 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 3, Ch. 106, L. 1955.

32-716. Deduction of allotment from future regular apportionments to the particular financial district. (a) The expenditure of moneys on the construction or reconstruction of primary bridges in any financial district from such allotment shall be deducted in equal installments from the future regular apportionments to that financial district over a period of not to exceed five (5) years, the first deduction commencing in the next fiscal year following the year in which the expenditure was made.

(b) The expenditure of moneys on the construction or reconstruction of secondary bridges from such allotment shall be deducted in equal installments from the future regular apportionments to the financial district pursuant to the provisions of section 84-1817 (3), Revised Codes of Montana, 1947, as amended by chapter 240, Laws of 1953, over a period not to exceed ten (10) years, the first deduction commencing in the next fiscal year following the year in which the expenditure was made.

History: En. Sec. 4, Ch. 106, L. 1955; amd. Sec. 3, Ch. 35, L. 1957.

Amendment

The 1957 amendment divided this section into subdivisions. In subd. (a) which was the entire section before amendment the words "on the construction or reconstruction of primary bridges" were inserted after the words "The expenditure of moneys."

Repealing Clauses

Section 5 of Ch. 106, Laws 1955 and Sec. 4 of Ch. 35, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 106, Laws 1955 provided the act should be in effect from and after the 30th day of June, 1955.

CHAPTER 8—GUIDE-BOARDS

(Repealed—Section 158, Ch. 263, Laws of 1955)

32-801 to 32-803. (1715 to 1717) Repealed.

Repeal

These sections (Secs. 1 to 3 of Ch. 7 of Ch. 141, L. 1915), relating to guide-boards along highways, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-804 to 32-806. (1718 to 1720) Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 142, L. 1921), relating to sign boards along highways, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

32-1011. (1736) Repealed.

Repeal

This section (Sec. 11 of Ch. 6 of Ch. 141, L. 1915), relating to a speed limit and the posting of such limit on bridges, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1015. (1740) Repealed.

Repeal

This section (Sec. 15 of Ch. 6 of Ch. 141, L. 1915), relating to the depositing of dangerous articles on the highways, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955. For new provision see Sec. 32-21-111.

32-1017. (1741.1) Repealed.

Repeal

This section (Sec. 1, Ch. 74, L. 1929), relating to a penalty for the defacing of signs or barriers on roads closed to traffic, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1123. Standards of maximum dimensions, weights, speeds, etc.
32-1127. Permits for excess size and weight.

32-1101, 32-1102. (1742, 1743) Repealed.

Repeal

These sections (Secs. 7, 8, Ch. 75, L. 1917; amd. Sec. 1, Ch. 80, L. 1927), relating to speed and traffic regulations, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1103. (1743.1) Repealed.

Repeal

This section (Sec. 1, Ch. 33, L. 1933; amd. Sec. 1, Ch. 70, L. 1949), relating to the requirement that vehicles carrying explosives or passengers for hire stop at railroad crossings, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1104. (1744) Repealed.

Repeal

This section (Sec. 81, Ch. 44, L. 1903; re-en. Sec. 1, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 1, Ch. 8 of Ch. 141, L. 1915), relating to rules upon the meeting of vehicles on highways, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1105. (1745) Repealed.

Repeal

This section (Sec. 82, Ch. 44, L. 1903; re-en. Sec. 2, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 2, Ch. 8 of Ch. 141 L. 1915), prohibiting the employment of drunkards as drivers, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1106. (1746) Repealed.

Repeal

This section (Sec. 83, Ch. 44, L. 1903; re-en. Sec. 3, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 3, Ch. 8 of Ch. 141, L. 1915), providing for the discharge from employment of intoxicated drivers, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1107 to 32-1109. (1746.1 to 1746.3) Repealed.

Repeal

These sections (Secs. 1, 3, 4, Ch. 166, L. 1929; amd. Secs. 1, 2, Ch. 198, L. 1943), relating to drunken driving and penalties therefor, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955. For new provision see Sec. 32-2142.

32-1111. (1747) Repealed.

Repeal

This section (Sec. 84, Ch. 44, L. 1903; re-en. Sec. 4, Ch. 8 of Ch. 72, L. 1913; re-en. Sec. 4, Ch. 8 of Ch. 141, L. 1915), relating to the duty of drivers to guard against runaway horses, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1123. Standards of maximum dimensions, weights, speeds, etc. The following standards are hereby made applicable to, and shall govern the maximum dimensions, weights and speeds of motor vehicles, and other characteristics and factors thereof, operating over the highways of, and in the state of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

(1) Width—No vehicle, unladen or with load, shall have a total outside width in excess of ninety-six (96) inches, except busses which may have a total outside width not to exceed one hundred two (102) inches, and such bus width shall be allowed only on paved highways twenty (20) feet or more in width; provided, however, that this restriction does not apply to implements of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than fifty (50) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry; provided, further, that with respect to such implements of husbandry having a width in excess of twelve (12) feet, it shall be preceded and followed by flagmen escorts for the purpose of warning other highway users.

(2) Height—No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet, six (6) inches.

(3) Length—(a) No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(b) No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of (1) truck-tractor and semitrailer, (2) truck and trailer, or other combination of vehicles shall consist of more than two units except that, at the discretion of the state highway commission, they may permit combinations of vehicles of not more than three units consisting of (3) tractor-semitrailer-semitrailer converted to full trailer by use of a dolly equipped with fifth wheel which shall be considered a part of the trailer for all purposes and not as a separate unit, or (4) tractor-semitrailer-full trailer, and no such combination of vehicles, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear unit of such combination shall be equipped with breakaway brakes.

(d) No motor vehicle shall tow more than one motor vehicle and no motor vehicle shall draw more than two motor vehicles attached thereto by the dual saddlemount method, that is by mounting the front wheels of one vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination have an

overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(e) No passenger vehicle or truck of less than two thousand (2000) pounds "manufacturers' rated capacity" shall tow more than one (1) trailer or semitrailer nor shall such combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(4) Speed—(a) Minimum speed. No motor vehicle shall be unnecessarily driven at such slow speed as to impede or block the normal and reasonable movement of traffic. Exception to this requirement shall be recognized when reduced speed is necessary for safe operation or when a vehicle or combination of vehicles is necessarily or in compliance with law or police direction proceeding at reduced speed.

(b) Maximum speed. No truck shall be operated at a speed greater than forty-five (45) miles per hour. Passenger vehicles may be operated at such speeds as shall be consistent at all times with safety and the proper use of the roads.

(c) Vehicles equipped with solid rubber on cushion tires shall be operated at a speed not in excess of ten (10) miles per hour.

(5) Permissible Loads—(a) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(b) The gross weight of any group of axles of any vehicle or combination of vehicles, when the distance between the first and last axles of any group of axles is eighteen (18) feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last axles of any group of axles of any vehicle or combination of vehicles, or between the first and last axles of all of the axles of any vehicle.	Maximum gross weight, in pounds, of any group of axles of any vehicle or combination of vehicles, or of any vehicle.
4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(c) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last axles of all of the axles of a vehicle or combination of vehicles.	Maximum gross weight, in pounds, of any vehicle or combination of vehicles.
18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	67,150
40	68,000
41	68,000
42	68,000
43	68,000
44	68,000
45	68,000
46	68,800
47	69,600
48	70,400
49	71,200
50	72,000
51	72,800
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half (½) foot the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b) and (c) of clause (5) above are subject to reasonable reduction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other cause.

(f) The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits herein recommended shall be permitted only if and when authorized by special permit issued by the state highway commission or its officers, supervisors or agents acting pursuant to duly delegated authority from said commission, including the state highway patrol.

History: En. Sec. 2, Ch. 123, L. 1947; amd. Sec. 1, Ch. 73, L. 1953; amd. Sec. 1, Ch. 250, L. 1955.

Amendment

The 1955 amendment added to subd. (1) all that portion appearing after the words "ninety-six (96) inches; paragraphs (c) and (d) of subd. (3) were completely rewritten, prior to this amendment they read "(c) No combination of truck-tractor and semitrailer, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 60 ft. (d) No other combination of vehicles shall consist of more than two units, and no such combination of vehicles, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 60 ft."; added paragraph (e) to subd. (3) and from the end of paragraph (e) of subd. (5) deleted the words "provided that the maximum limitations expressed in paragraphs (a), (b) and (c) of clause (5) shall not apply to the incidental and occasional use of such highways by vehicles not usually, or ordinarily engaged in highway use and employed primarily in agricultural or industrial uses other than on such highways."

Repealing Clause

Section 2 of Ch. 250, Laws 1955 repealed all acts and parts of acts in conflict therewith.

32-1127. (1751.6) **Permits for excess size and weight.** The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified in this act upon any highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; provided, however, that no permits are to be issued for movement of vehicles carrying build-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in this act; provided, however, that no permits are to be issued for the moving of loads for any considerable distances over such highways when the loads in question are of such excess width that all traffic lanes upon the highway concerned would be blocked to the serious inconvenience of normal traffic; and further provided that no permits are to be granted for the moving of loads of such excess width that a hazard to traffic would be involved for any considerable distances over the highways concerned except to those applicants who carry public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of more than nine (9) months.

The applicant for any special permit shall specifically describe the vehicle or vehicles and load to be operated or moved, and the particular state highways for which permit to operate is requested and whether such permit is required for single trip or for continuous operation. All

fees collected under this act shall be forwarded to the state treasurer for deposit in the state highway general fund.

(a) Special Permits—Discretion of Issuer—Conditions. The state highway commission or local authority is authorized to issue or withhold such special permit at its discretion, or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicle described may be operated on the public highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure.

(b) Special Permits—Fees. The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the state highway commission:

Three dollars ($3.00) for each permit issued in excess of the size and weight specified in this act: provided, however, that term or blanket permits shall not be issued for overwidth loads in excess of fifteen (15) feet, overlength loads in excess of seventy (70) feet, and overheighth loads in excess of a limit determined by the highway commission. Loads in excess of these dimensions will be limited to trip permits.

In addition to the three dollar ($3.00) fee specified herein for overweight permits, there shall be charged (1) for single trip permits five dollars ($5.00) for distances to and including one hundred (100) miles, fifteen dollars ($15.00) for distances from one hundred one (101) to one hundred ninety-nine (199) miles, and twenty-five dollars ($25.00) for distances over two hundred (200) miles traveled, for such excess load over the gross allowable load specified in this section or the sum of the excess axle loads, whichever is greater.

(c) Special Permits—Misrepresentations and Violations—Penalty—Display of Permit. Any person who knowingly and wilfully misrepresents the size or weight of any load in obtaining a special permit or does not follow the requirements and conditions of the special permit or who operates any vehicle, the gross weight of which is in excess of the maximum for which such vehicle may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Every special permit issued hereunder shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the maintenance department of the Montana highway commission.

A peace officer, officer of the Montana highway patrol, or employees of the maintenance department of the Montana highway commission who shall find any person operating a vehicle in violation of the conditions of a special permit issued hereunder may confiscate such permit and forward the same to the state highway commission which may return it to the permittee or revoke, cancel, or suspend it without refund. The state highway commission shall keep a record of all action taken upon

permits so confiscated and if a permit shall be returned to the permittee, the action taken by the commission shall be endorsed thereon. Any permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after such hearing, may reinstate any permit or revise its previous action.

History: En. Sec. 6, Ch. 171, L. 1931; amd. Sec. 2, Ch. 147, L. 1933; amd. Sec. 5, Ch. 184, L. 1939; amd. Sec. 1, Ch. 254, L. 1955.

Amendment

The 1955 amendment inserted the first proviso clause in the first paragraph; deleted the words "and every such permit shall designate the routes to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting such permit, and may be cancelled at any time by such body for cause. Every such permit or a true copy thereof shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the maintenance department of the Montana highway commission and it shall be a misdemeanor for any person, firm or corporation to violate any of the terms or conditions of such permit" which appeared at the end of the first paragraph and added all of this section following the first paragraph.

Repealing Clause

Section 2 of Ch. 254, Laws 1955 repealed all acts and parts of acts in conflict therewith.

32-1132, 32-1133. (1753, 1754) Repealed.

Repeal

These sections (Secs. 9, 11, Ch. 75, L. 1917; amd. Sec. 1, Ch. 110, L. 1919), relating to required accessories on motor vehicles and providing a penalty, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1134 to 32-1137. (1754.1 to 1754.4) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 134, L. 1931), relating to driving on highways under construction and detours, designation of through routes, and prohibiting the parking on bridges or obstructing highways, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1138, 32-1139. (1754.5, 1754.7) Repealed.

Repeal

These sections (Secs. 1, 3, Ch. 70, L. 1933), relating to the concealing of identity after an accident and providing a penalty therefor, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1140 to 32-1142. (1754.8 to 1754.10) Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 81, L. 1933), relating to lights on the rear of vehicles, and on protruding loads or vehicles, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1146. Repealed.

Repeal

This section (Sec. 1, Ch. 96, L. 1947), relating to the right of way of motorized fire equipment, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

Section 32-1608. Contracts, how awarded.
32-1622. Authority for agreements to study, analyze, or test the effects of weights on highways.
32-1623. Designation of highways not located entirely and continuously within state as state highways—conditions.
32-1624. Powers regarding such highways.
32-1625. Facilities of utilities—relocation—cost—definitions.

32-1601. (1783) State highway commission—creation—salary—bond, etc.

References

Cited or applied in Anderson v. United States Civil Service Comm., 119 F Supp 567, 573.

32-1608. (1790) Contracts, how awarded. All contracts for work on state highways shall be let by the state highway commission, except as hereinafter provided. When the estimated cost of any piece of work shall exceed one thousand dollars ($1,000.00), it shall be the duty of the state highway commission to let such contract by competitive bidding, upon such notice and upon such terms as the commission by its rules and regulations prescribe; provided that if the commission shall find such work may be done and performed by force account or by day's labor in a more efficient manner, it may so conduct the work, and provided further that the commission may use convict labor as, in its judgment, is deemed proper. A contractor upon being awarded a contract for construction, improvement, maintenance or marking upon a state highway, and before entering upon such work shall execute to the state of Montana a bond to be approved by the commission, and to be conditioned for the faithful discharge of its duties under such contract. Provided, however, that on any highway construction work, which is financed in whole or in part by federal funds, and the secretary of commerce of the United States of America shall affirmatively find that under the circumstances relating to a given project some other method than competitive bidding is in the public interest, the state highway commission is authorized and empowered to enter into contracts with any board of county commissioners of any county, whereby such county is authorized to acquire rights of way, survey and construct farm to market, secondary or feeder roads within such county, by force account, unit price or otherwise, as may be agreed upon by said state highway commission and said board of county commissioners.

All contracts for work on state highways where federal and/or state funds are involved shall, when applicable, contain the prevailing rates of wages as set by collective bargaining in effect in the areas covered by heavy and highway labor agreements.

History: En. Sec. 8, Ch. 10, Ex. L. 1921; re-en. Sec. 1790, R. C. M. 1921; amd. Sec. 1, Ch. 91, L. 1955; amd. Sec. 1, Ch. 43, L. 1957.

Amendments

The 1955 amendment inserted the words "except as hereinafter provided" at the end of the first sentence and added the proviso clause.

The 1957 amendment added the second paragraph.

Repealing Clauses

Section 2 of Ch. 91, Laws 1955 and Sec. 2 of Ch. 43, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-1609. (1791) Assent to federal aid road act.

Operation and Effect

Where, in order to comply with federal requirements in order to make a city street part of federal aid highway, the city adopted a resolution limiting its power to place speed limits and signs on the street, it was not a surrender of the police power of the city, but rather a limitation upon the method or means by which such power might be exercised. City streets belong to the state and the city is but the trustee thereof. Bidlingmeyer v. City of Deer Lodge, 128 M 292, 274 P 2d 821, 823.

32-1611, 32-1612. (1793, 1794) Repealed.

Repeal

These sections (Secs. 11, 12, Ch. 10, Ex. L. 1921), relating to the erection of standard guide signs and providing a penalty for the defacing thereof, were repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

32-1622. Authority for agreements to study, analyze, or test the effects of weights on highways. The state highway commission is authorized to make and enter into agreements with the federal government or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highway construction. Such studies or tests may be made either by designating existing highway or the construction of test strips, including natural resource roads, to the end that a proper solution of the many problems connected with the imposition on highways of motor vehicle weights may be determined.

Such studies may determine the determination of values to be assigned various highway-user groups according to their gross weight or use.

History: En. Sec. 1, Ch. 15, L. 1955.

Title of Act

An act providing for the state highway commission to enter into agreements with the federal government, or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highway construction; and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 15, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 15, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 5, 1955.

32-1623. Designation of highways not located entirely and continuously within state as state highways—conditions. The state highway commission is hereby authorized to designate such public roads as shall be classed as state highways and subject to improvements under the provisions of the Federal Aid Road Act of Congress, approved July 11, 1916, and all other acts granting aid for public highways, even though such road or highway is not located entirely and continuously within the boundaries of the state of Montana. The designation of such roads or highways shall meet the following conditions:

(1) That it shall be on an approved federal aid route and eligible for improvement under the Federal Aid Highway Acts;

(2) That the location of a portion of such route outside the boundaries of the state of Montana is necessary because of natural geographical or physical conditions which make the construction of the highway within the state of Montana impossible or impracticable;

(3) That the portion of such route located outside the state of Montana does not connect with and is not a part of the state highway system of the adjoining state.

History: En. Sec. 1, Ch. 30, L. 1955.

Title of Act

An act to provide for the construction and maintenance of state highways which serve the people of the state of Montana, are located primarily in the state of Montana, and which are partially located outside the boundaries of the state of Montana because of geographical or other physical conditions which make it impossible or impracticable to locate or con-

struct or reconstruct said highways entirely within the boundaries of the state of Montana; providing that said portion of highway outside the state of Montana does not connect to or is not a part of the state highway system of any adjoining state; providing that the cost of construction, reconstruction, engineering, administration, betterment and maintenance shall be paid out of funds of the state highway commission; repealing all acts and parts of acts in conflict therewith and providing an effective date.

32-1624. Powers regarding such highways. The state highway commission is authorized to do all things necessary or required to carry out fully the cooperation contemplated under the Federal Aid Highway Acts with regard to such roads and to expend funds for the construction, reconstruction, engineering, administration, betterment and maintenance thereof.

History: En. Sec. 2, Ch. 30, L. 1955.

Repealing Clause

Section 3 of Ch. 30, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 30, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 17, 1955.

32-1625. Facilities of utilities — relocation — cost — definitions. (a) The state highway commission shall have the power and authority to make and publish after appropriate hearings reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "facilities") of any utility in, on, along, over, across, through or under any project on (1) the Federal-Aid Primary System, or (2) the Federal-Aid Secondary System, or on (3) the Interstate System, including extensions thereof within urban areas. Whenever the commission shall determine, after written notice supplied to all concerned not less than twenty (20) days in advance of hearing and fair, public hearing at the time and place noticed for hearing (unless hearing is waived by the utility or other interested parties in writing), that it is necessary that any such facilities which now are, or hereafter may be, located in, on, along, over, across, through or under any such Federal-Aid Primary System, Federal-Aid Secondary System, or on the Interstate System, including extensions thereof within urban areas, should be relocated, the utility owning or operating such facilities shall relocate the same in accordance with the valid order of the commission, and seventy-five per cent (75%) of all costs of relocation, including acquisition of new right of way, dismantling, and removal, shall be paid by the state of Montana through the state highway commission. In case of any such relocation of facilities, as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations.

(b) Definitions. For the purposes of this section:

The term "utility" shall include publicly, privately and cooperatively owned utilities.

The term "cost of relocation" shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility; and,

The term "Interstate System" means any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, as provided in the Federal-Aid Highway Act of 1956, and any acts supplemental thereto or amendatory thereof.

(c) The cost of relocating utility facilities in connection with any project on the Federal-Aid Primary System or Federal-Aid Secondary System or on the Interstate System is hereby declared to be a cost of highway construction.

History: En. 32-1625 by Sec. 1, Ch. 254, L. 1957.

Title of Act

An act to amend and supplement chapter 16, entitled "State Highway Commission and Highway Engineer—Powers and Duties," of Title 32, "Highways, Bridges and Ferries," Revised Codes of Montana, 1947, as amended and supplemented, by adding to said chapter 16, a new section to be numbered section 32-1625 of said codes, to empower the state highway commission of the state of Montana to make reasonable regulations for the removal, relocation, renewal and reconstruction of facilities of any utility, whether public, private or cooperatively owned, in connection with any project on any Federal-Aid Primary Highway System, Federal-Aid Secondary Highway System, or on any Interstate Highway System, and to require utilities to relocate the same in accordance with valid orders of the commission; providing that seventy-five percent (75%) of the costs of removal, relocation including acquisition of any new right of way, renewal and reconstruction of such facilities, shall be paid by the state of Montana through the state highway commission and that any such utilities may maintain and operate any such facilities in the new location or locations; defining terms used in this act; repealing all acts and parts of acts in conflict with this act; and providing for an effective date.

Constitutionality

Section 2 of Ch. 254, Laws 1957 read "If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislative assembly hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts would be declared unconstitutional."

Repealing Clause

Section 3 of Ch. 254, Laws 1957 read "This act is hereby declared to be superior to and of controlling force over any code provisions, statutes, session laws, and acts in any respect conflicting herewith, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 4 of Ch. 254, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 19, 1957.

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

Section 32-2001. Purpose.
32-2002. Definitions.
32-2003. Designation as controlled access highway—resolution—findings.
32-2004. Powers of highway authorities.
32-2005. Design of controlled access facility—ingress and egress restricted.
32-2006. Acquisition of property for facility.
32-2007. New and existing facilities—grade crossing eliminations.
32-2008. Existing roads and streets as service roads.
32-2009. Marking of facility with signs.
32-2010. Violations specified—penalty.

32-2001. Purpose. It is the declared policy of this state to facilitate the flow of traffic and promote public safety by controlling access to highways included by the bureau of public roads in the national system of interstate highways.

History: En. Sec. 1, Ch. 104, L. 1955.

Title of Act

An act to provide for the planning, designation, establishment, use, regulation, alteration, improvement, maintenance, and vacation of controlled-access facilities; the acquisition of lands required therefor; the restriction of intersections and control of approaches; the establish-

ment of local service roads; the prohibition of certain acts thereon and provision for penalties therefor; repealing all acts and parts of acts in conflict therewith; and providing that this act shall be in full force and effect from and after its passage and approval.

32-2002. Definitions. When used in this act:

(a) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(b) "Controlled access highway" means all portions of an interstate highway which the state highway commission shall determine and designate for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that the property abuts upon such highway, or for any other reason, and shall further include those portions of spurs to the interstate highway system which the state highway commission shall determine and designate as unsafe for or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(c) "Controlled access facility" means and includes all streets, alleys, public roads, private roads and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(d) "Existing highway" means and includes all highways, roads and streets heretofore established, constructed and in use. It shall not include new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated.

History: En. Sec. 2, Ch. 104, L. 1955; amd. Sec. 1, Ch. 121, L. 1957.

Amendment

The 1957 amendment substituted present subd. (b) for one which formerly read "(b) 'Controlled access highway' means all portions of an interstate highway which the state highway commission shall determine and designate as unsafe for and impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage."

32-2003. Designation as controlled access highway—resolution—findings. No part or portion of an interstate highway shall be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the owners or occupants of the abutting land or other persons have no easement of access or only a limited easement of access, light, air or view by reason of the fact that their property abuts upon such highway or for any other reason: It is hereby declared that the requirement by the federal government that access be controlled is necessity for the passing of such resolution by the highway authorities; nor shall any part or portion of any interstate, or spurs to the interstate highway system be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the rights of, or easements to access, light, air or view be acquired by the state so as to prevent such part or portion of highway from becoming unsafe for or im-

peded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage. Such resolution shall contain a statement of the reasons for the adoption thereof, and shall set forth the location, distance and termini of the portion of the highway designated as a controlled access highway.

History: En Sec. 3, Ch. 104, L. 1955; amd. Sec. 2, Ch. 121, L. 1957.

Amendment

The 1957 amendment substituted that part of this section beginning with the words "it is necessary and/or desirable that the owners * * *" and continuing to the last sentence for the words "traffic congestion will result from unrestricted access thereto, or that hills, curves, or other conditions with respect to traffic control or public safety render it unsafe to permit unrestricted access thereto." The amendment also deleted the word "interstate" which appeared after the words "portion of the" in the last sentence.

32-2004. Powers of highway authorities. The highway authorities of the state, counties, incorporated cities and towns, having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use wherever such authority or authorities shall find and determine the necessity or desirability of such controlled access facilities as defined in this chapter. Provided, that within incorporated cities and towns, and upon county roads within counties, such authority or authorities shall be subject to the consent of the governing body. Said highway authorities of the state, counties, incorporated cities and towns, in addition to the specific powers granted in this act, shall also have and may exercise, relative to controlled access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said units may regulate, restrict, or prohibit the use of such controlled access facilities by the various classes of vehicles or traffic.

History: En Sec. 4, Ch. 104, L. 1955; amd. Sec. 3, Ch. 121, L. 1957.

Amendment

The 1957 amendment substituted the words "the necessity or desirability of such controlled access facilities as defined in this chapter" for the words "that traffic conditions will justify such special facilities" which appeared after the word "determine" near the end of the first sentence.

32-2005. Design of controlled access facility—ingress and egress restricted. The highway authorities of the state, counties, incorporated cities and towns are authorized to so design any controlled access facility and to so regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection such highway authorities are authorized to divide and separate any controlled access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and other devices. No person shall have any rights of ingress or egress to, from or across controlled access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

History: En. Sec. 5, Ch. 104, L. 1955.

32-2006. Acquisition of property for facility. For the purpose of this act, the highway authorities of the state, counties, incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for controlled access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. A right of way is hereby given, dedicated and set apart for controlled access facilities through, over, upon or across any county road and any street or alley intersecting a controlled access highway, and the acquisition of any such county road, street, or alley for use as a controlled access facility shall be deemed superior and a more necessary public use and purpose than the public use or purpose to which such road, street or alley has theretofore been dedicated.

History: En. Sec. 6, Ch. 104, L. 1955.

32-2007. New and existing facilities—grade crossing eliminations. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled access facilities with existing state and county roads, and city or town streets at the right-of-way boundary line of such controlled access facility; and after the establishment of any controlled access facility, no highway or street which is not a part of said facility shall intersect the same at grade. No incorporated city or town street, county or state highway, or other public way shall be opened into or connected with any such controlled access facility without the consent and previous approval of the highway authority in the state, county, incorporated city or town having jurisdiction over such controlled access facility. Provided, however, that the commission may, whenever it determines that traffic is not thereby impeded and that public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas.

History: En. Sec. 7, Ch. 104, L. 1955.

32-2008. Existing roads and streets as service roads. In connection with the development of any controlled access facility the state, county, or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled access facilities under the terms of this act, whenever such local service roads are necessary for carrying out any of the provisions of this act. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled access facility proper by means of all

devices determined to be necessary in carrying out the provisions of this act.

History: En. Sec. 8, Ch. 104, L. 1955.

32-2009. Marking of facility with signs. After the opening of any new and additional controlled access facility, or after the designation and establishment of any existing street or highway as included, the particular highways and streets or those portions thereof designated and established, shall be physically marked and indicated by the erection and maintenance of signs indicating to drivers of vehicles that they are entering a controlled access area and that they are leaving a controlled access area.

History: En. Sec. 9, Ch. 104, L. 1955.

32-2010. Violations specified—penalty. After the opening of any new and additional controlled access highway facility, or after the designation and establishment of any existing street or highway as included, it shall be unlawful for any person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled access facilities; (2) to make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the controlled access facility from a local service road except through an opening provided for that purpose in the dividing curb, or dividing section, or dividing line which separates such service road from the controlled access facility proper. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10, Ch. 104, L. 1955.

Separability Clause

Section 11 of Ch. 104, Laws 1955 as amended by Sec. 4 of Ch. 121, Laws 1957 read "Severability. If any section, provision, or clause of this act shall be declared invalid or inapplicable to any person or circumstance, such invalidity or inapplicability shall not be construed to affect the portions not so held or persons or circumstances not so affected. All laws or portions of laws inconsistent with the policy and provisions of this act are hereby repealed to the extent of such inconsistency in its application to controlled access facilities provided for in this act. Provided further that nothing herein contained shall be construed to be in conflict with any federal aid highway act or any amendments to such acts."

Repealing Clauses

Section 12 of Ch. 104, Laws 1955 and Sec. 5 of Ch. 121, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 13 of Ch. 104, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

Section 6 of Ch. 121, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Section 32-2101. Definition of words and phrases.
32-2102. Definitions — vehicle — motor vehicle — motorcycle — motor-driven cycle—authorized emergency vehicle—school bus—bicycle—special mobile equipment.
32-2103. Definitions—truck-tractor—farm tractor—road tractor.
32-2104. Definitions—truck—bus—trackless trolley coach.
32-2105. Definitions—trailer—semitrailer—pole trailer—house trailer.
32-2106. Definitions—pneumatic tire—solid tire—metal tires.
32-2107. Definitions—railroad—railroad train.
32-2108. Definitions—explosives—flammable liquid.
32-2109. Definitions—gross weight.
32-2110. Definitions—Supervisor—board—commission.
32-2111. Definitions—person—pedestrian—driver—owner.
32-2112. Police officer or highway patrolman.
32-2113. Local authorities.
32-2114. Street or highway—private road or driveway—roadway—sidewalk—laned roadway—through highway—controlled-access highway.
32-2115. Intersection.
32-2116. Crosswalk.
32-2117. Safety zone.
32-2118. Business district—residence district.
32-2119. Official traffic-control devices—traffic-control signal—railroad sign or signal.
32-2120. Traffic.
32-2121. Right of way.
32-2122. Stop—stop, stopping, or standing—park.
32-2123. Arterial street—implement of husbandry—urban district.
32-2124. Provisions of act refer to vehicles upon the highways—exceptions.
32-2125. Required obedience to traffic laws.
32-2126. Obedience to police officers and highway patrolmen.
32-2127. Public officers and employees to obey act.
32-2128. Authorized emergency vehicles.
32-2129. Traffic laws apply to persons driving animal-drawn vehicles.
32-2130. Provisions of act uniform throughout state.
32-2131. Powers of local authorities.
32-2132. This act not to interfere with rights of owners of real property with reference thereto.
32-2133. State highway commission to adopt sign manual.
32-2134. State highway commission to sign all state highways.
32-2135. Local traffic-control devices.
32-2136. Obedience to and required traffic-control devices.
32-2137. Traffic-control signal legend.
32-2138. Pedestrian control signals.
32-2139. Flashing signals.
32-2140. Display of unauthorized signs, signals, or markings.
32-2141. Interference with official traffic-control devices or railroad signs or signals.
32-2142(1), 32-2142(2). Persons under the influence of intoxicating liquor or of drugs.
32-2143. Reckless driving.
32-2144. Speed restrictions—basic rule.
32-2145. Establishment of state speed zones.
32-2146. When local authorities may and shall alter limits.
32-2147. Minimum speed regulations.
32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.
32-2149. Special speed limitations.
32-2150. Charging violations.
32-2151. Drive on right side of roadway—exceptions.
32-2152. Passing vehicles proceeding in opposite directions.
32-2153. Overtaking a vehicle on the left.
32-2154. When overtaking on right is permitted.
32-2155. Limitations on overtaking on the left.
32-2156. Further limitations on driving to left of center of roadway.
32-2157. No-passing zones.
32-2158. One-way roadways and rotary traffic islands.

32-2159. Driving on roadways laned for traffic.
32-2160. Following too closely.
32-2161. Driving on divided highways.
32-2162. Restricted access.
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32-2101. Definition of words and phrases. The following words and phrases when used in this act shall, for the purpose of this act, have meanings respectively ascribed to them in this article [32-2101 to 32-2123].

History: En. Sec. 1, Ch. 263, L. 1955.

Compiler's Note.

Sections 32-2101 to 32-2123 comprised Article I of Ch. 263, Laws 1955 entitled "Words and Phrases Defined."

Title of Act

An act regulating traffic and the operation of vehicles upon the public highways of the state of Montana, to make uniform the laws relating thereto and to be known as The Montana Uniform Act Regulating Traffic on the Highways; defining certain terms used in the act; defining the power of local authorities to enact or enforce ordinances, rules, or regulations in regard to matters embraced within the provisions of this act; establishing rules of the road, and providing for the obedience to and effect of traffic laws, exceptions thereto, and defining the duties and obligations of authorized emergency vehicles; providing for obedience to traffic signs, signals, and markings and required traffic-control devices; providing for driving vehicles on the right side of roadway —overtaking and passing, and the limitations thereon, and establishment of no-passing zones, and restrictions on the use of controlled access roadways; providing for the right of way for vehicles approaching or entering intersections, turning left at intersections, entering through highway or stop intersection, or from private road or driveway; providing for pedes-

trians' rights and duties and providing that drivers exercise due care; prohibiting pedestrians from soliciting rides or business; providing for turning and starting vehicles and signals to be given on stopping and turning; requiring special stops and obedience to signals on approach of train; and providing that vehicles stop at railroad grade crossings and providing for moving heavy equipment at railroad grade crossings and providing that a driver of a vehicle emerging from an alley, driveway, or building must stop; defining the duties of a driver of a vehicle on overtaking and passing school bus; establishing speed restrictions, limitations of speed, and speed zones; defining certain crimes in the use and operation of vehicles and fixing penalties; regulations on stopping, standing and parking of vehicles and providing for additional parking regulations; providing for miscellaneous rules on unattended motor vehicles; regulating riding on motorcycles, regulations on backing, obstruction to driver's view or driving mechanism, driving on mountain highways; prohibiting following fire apparatus, crossing fire hose; prohibiting the deposit of certain materials on the highways; providing for the operation of bicycles and play vehicles on the highway; providing for vehicle's equipment and devices and inspection thereof; defining and regulating the lighting equipment, brakes and other vehicular devices on motor vehicles and other vehicles while traveling on the public highways; providing for revocation of operators' and chauffeurs' licenses upon the conviction of certain crimes and providing that upon application to the Montana highway patrol board by operators or chauffeurs who have had their licenses revoked and upon proper showing on the part of the said applicant the board may issue restricted licenses; providing for enforcement; providing for uniformity of interpretation; providing that if part of this act be held unconstitutional it shall not affect remaining parts of act; repealing sections 31-107, Revised Codes of Montana, 1947, as amended by section 1, chapter 94, Laws of 1949, 31-108 Revised Codes of Montana, 1947, as amended by section 1, chapter 118, Laws of 1949, 31-109, 32-801, 32-802, 32-803, 32-804, 32-805, 32-806, 32-1011, 32-1015, 32-1017, 32-1101, 32-1102, 32-1103, Revised Codes of Montana, 1947, as amended by section 1, chapter 70, Laws of 1949, 32-1104, 32-1105, 32-1106, 32-1107, 32-1108, 32-1109, 32-1111, 32-1132, 32-1133, 32-1134, 32-1135, 32-1136, 32-1137, 32-1138, 32-1139, 32-1140, 32-1141, 32-1142, 32-1146, 32-1611, 32-1612, 69-1913, 69-1915, Revised Codes of Montana, 1947; repealing all acts and parts of acts in conflict therewith; and providing effective date of act.

32-2102. Definitions — vehicle — motor vehicle — motorcycle — motor-driven cycle—authorized emergency vehicle—school bus—bicycle—special mobile equipment. (a) Vehicle. Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(b) Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

(d) Motor-Driven Cycle. Every motorcycle, including every motor scooter, with a motor which produces not to exceed five (5) horsepower, and every bicycle with motor attached.

(e) Authorized Emergency Vehicle. Vehicles of the fire department, fire patrol, police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations or of persons as are designated or authorized by the board.

(f) School Bus. Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(g) Bicycle. Every device propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is more than twenty (20) inches in diameter.

(h) Special Mobile Equipment. Every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section.

History: En. Sec. 2, Ch. 263, L. 1955.

Compiler's Note

Sections 32-2102 to 32-2109 comprised Subdivision I of Article I of Ch. 263, Laws 1955 entitled "Vehicles and Equipment Defined."

32-2103. Definitions—truck-tractor—farm tractor—road tractor. (a) Truck-tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) Farm Tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(c) Road Tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

History: En. Sec. 3, Ch. 263, L. 1955.

32-2104. Definitions—truck—bus—trackless trolley coach. (a) Truck. Every motor vehicle designed, used, or maintained primarily for the transportation of property.

(b) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(c) Trackless Trolley Coach. Every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

History: En. Sec. 4, Ch. 263, L. 1955.

32-2105. Definitions—trailer—semitrailer—pole trailer—house trailer. (a) Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) Semitrailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(c) Pole Trailer. Every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(d) House Trailer. A trailer or a semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways, or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined above, but which is used permanently or temporarily for the advertising, sales, display or promotion of merchandise or services, or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

History: En. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957.

Amendment

The 1957 amendment deleted the words "persons or" which appeared between the words "carrying" and "property" in both subd. (a) and subd. (b) and added subd. (d).

Repealing Clause

Section 2 of Ch. 204, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-2106. Definitions—pneumatic tire—solid tire—metal tires. (a) Pneumatic Tire. Every tire in which compressed air is designed to support the load.

(b) Solid Tire. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(c) Metal Tires. Every tire the surface of which in contact with the highway is wholly or partly metal or other hard nonresilient material.

History: En. Sec. 6, Ch. 263, L. 1955.

32-2107. Definitions—railroad—railroad train. (a) Railroad. A carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(b) Railroad Train. A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

History: En. Sec. 7, Ch. 263, L. 1955.

32-2108. Definitions — explosives — flammable liquid. (a) Explosives. Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(b) Flammable Liquid. Any liquid which has a flash point of seventy (70) degrees F., or less, as determined by a tagliabue or equivalent closed cup test device.

History: En. Sec. 8, Ch. 263, L. 1955.

32-2109. Definitions—gross weight. Gross Weight. The weight of a vehicle without load plus the weight of any load thereon.

History: En. Sec. 9, Ch. 263, L. 1955.

32-2110. Definitions—supervisor—board—commission. (a) Supervisor. The supervisor of the Montana highway patrol of this state.

(b) Board. The Montana highway patrol board of this state acting directly or through its duly authorized officers and agents.

(c) Commission. The state highway commission of Montana.

History: En. Sec. 10, Ch. 263, L. 1955.

Compiler's Note

Sections 32-2110 to 32-2113 comprised Subdivision II of Article I of Ch. 263, Laws 1955 entitled "Governmental Agencies, Persons, Owners, etc., Defined."

32-2111. Definitions—person—pedestrian—driver—owner. (a) Person. Every natural person, firm, copartnership, association, or corporation.

(b) Pedestrian. Any person afoot.

(c) Driver. Every person who drives or is in actual physical control of a vehicle.

(d) Owner. A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease therof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

History: En. Sec. 11, Ch. 263, L. 1955.

32-2112. Police officer or highway patrolman. Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

History: En. Sec. 12, Ch. 263, L. 1955.

32-2113. Local authorities. Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

History: En. Sec. 13, Ch. 263, L. 1955.

32-2114. Street or highway—private road or driveway—roadway—sidewalk—laned roadway—through highway—controlled-access highway. (a) Street or Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the purpose of vehicular travel.

(b) Private Road or Driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(c) Roadway. That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(d) Sidewalk. That portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

(c) Laned Roadway. A roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic.

(f) Through Highway. Every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this act.

(g) Controlled-access Highway. Every highway, street, or roadway, in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

History: En. Sec. 14, Ch. 263, L. 1955. Laws 1955 entitled "Highways, Restricted Districts, Zones, etc., Defined."

Compiler's Note

Sections 32-2114 to 32-2123 comprised Subdivision III of Article I of Ch. 263,

32-2115. Intersection. (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection.

History: En. Sec. 15, Ch. 263, L. 1955.

32-2116. Crosswalk. (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

History: En. Sec. 16, Ch. 263, L. 1955.

32-2117. Safety zone. The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

History: En. Sec. 17, Ch. 263, L. 1955.

32-2118. Business district—residence district. (a) Business District. The territory contiguous to and including a highway when within any six hundred (600) feet along such highway there are buildings in use for busi-

ness or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway.

(b) Residence District. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred (300) feet or more is in the main improved with residences or residences and buildings in use for business.

History: En. Sec. 18, Ch. 263, L. 1955.

32-2119. Official traffic-control devices—traffic-control signal—railroad sign or signal. (a) Official Traffic-control Devices. All signs, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) Traffic-control Signal. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(c) Railroad Sign or Signal. Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

History: En. Sec. 19, Ch. 263, L. 1955.

32-2120. Traffic. Pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

History: En Sec. 20, Ch. 263, L. 1955.

32-2121. Right of way. The privilege of the immediate use of the roadway.

History: En. Sec. 21, Ch. 263, L. 1955.

32-2122. Stop—stop, stopping, or standing—park. (a) Stop. When required means complete cessation from movement.

(b) Stop, Stopping, or Standing. When prohibited means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrolman, or traffic-control sign or signal.

(c) Park. When prohibited means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

History: En. Sec. 21.1, Ch. 263, L. 1955.

32-2123. Arterial street—implement of husbandry—urban district. (a) Arterial Street. Any U. S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system or highway.

(b) Implement of Husbandry. Every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations.

(c) Urban District. The territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred (100) feet for a distance of a quarter (¼) of a mile or more.

History: En. Sec. 21.2, Ch. 263, L. 1955.

32-2124. Provisions of act refer to vehicles upon the highways—exceptions. The provisions of this act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.

2. The provisions of Article IV [32-2142, 32-2143] of this act and chapter 12, Title 32, Revised Codes of Montana, 1947, shall apply upon highways and elsewhere throughout the state.

History: En. Sec. 22, Ch. 263, L. 1955.

Compiler's Note

Sections 32-2124 to 32-2132 comprised Article II of Ch. 263, Laws 1955 entitled "Obedience to and Effect of Traffic Laws."

32-2125. Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this act with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this act.

History: En. Sec. 23, Ch. 263, L. 1955.

32-2126. Obedience to police officers and highway patrolmen. No person shall wilfully fail or refuse to comply with any lawful order or direction of any police officer or highway patrolman pertaining to the use of the highways by traffic.

History: En. Sec. 24, Ch. 263, L. 1955.

32-2127. Public officers and employees to obey act. (a) The provisions of this act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this act with reference to authorized emergency vehicles.

(b) Persons Working on Highways—Exceptions. Unless specifically made applicable, the provisions of this chapter except those contained in Article IX [32-2176 to 32-2183] hereof shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

History: En Sec. 25, Ch. 263, L. 1955.

32-2128. Authorized emergency vehicles. (a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this act;

2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

3. Exceed the speed limits so long as he does not endanger life or property;

4. Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of section 129 [32-21-132] of this act, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History: En. Sec. 25.1, Ch. 263, L. 1955; amd. Sec. 1, Ch. 169, L. 1957.

Amendment

The 1957 amendment substituted "section 129" for "section 131" in subd. (c).

32-2129. Traffic laws apply to persons driving animal-drawn vehicles. Every person driving an animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this act, except those provisions of this act which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955.

32-2130. Provisions of act uniform throughout state. The provisions of this act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulations in conflict with the provisions of this act unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this act.

History: En. Sec. 27, Ch. 263, L. 1955; amd. Sec. 1, Ch. 201, L. 1957.

Amendment

The 1957 amendment made no change in this section.

32-2131. Powers of local authorities. (a) The provisions of this act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;

2. Regulating the traffic by means of police officers or traffic-control devices;

3. Regulating or prohibiting processions or assemblages on the highways;

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one (1) specific direction;

5. Regulating the speed of vehicles in public parks;

6. Designating any highway as a through highway and requiring that all the vehicles stop before entering or crossing the same, designating any intersection as a stop intersection, and requiring all vehicles to stop at one or more entrances to such intersections;

7. Restricting the use of highways as authorized in section 32-1128, Revised Codes of Montana, 1947;

8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

10. Altering the speed limits as authorized herein;

11. Regulating the driving of vehicles by any person who is an habitual user of, or under the influence of, any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the incorporated limits of any city or town.

12. Regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the incorporated limits of any city or town.

13. Regulating or prohibiting the driving of vehicles by any person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of any city or town.

14. Adopting such other traffic regulations as are specifically authorized by this act.

History: En. Sec. 28, Ch. 263, L. 1955; amd. Sec. 2, Ch. 201, L. 1957.

Amendment

The 1957 amendment inserted new subsecs. 11 to 13 under subd. (a) and renumbered former subsec. 11 as subsec. 14. The 1957 amendment also deleted two former subds. (b) and (c) which read "(b) No local authority shall erect or maintain any stop sign or traffic control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state highway commission.

"(c) No ordinance or regulation enacted under subdivisions (4), (5), (6), (7) or (10) of section 28(a) shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate."

32-2132. This act not to interfere with rights of owners of real property with reference thereto. Nothing in this act shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this act, or otherwise regulating such use as may seem best to such owner.

History: En. Sec. 29, Ch. 263, L. 1955.

32-2133. State highway commission to adopt sign manual. The state highway commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this act for use upon highways within the state. Such uniform system shall cor-

relate with and so far as possible conform to the system then current as approved by the American association of state highway officials.

History: En. Sec. 30, Ch. 263, L. 1955. Article III of Ch. 263, Laws 1955 entitled "Traffic Signs, Signals, and Markings."

Compiler's Note

Sections 32-2133 to 32-2141 comprised

32-2134. State highway commission to sign all state highways. (a) The state highway commission shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this act or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the state highway commission except by the latter's permission.

History: En. Sec. 31, Ch. 263, L. 1955.

32-2135. Local traffic-control devices. (a) Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this act or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

History: En. Sec. 32, Ch. 263, L. 1955.

32-2136. Obedience to and required traffic-control devices. (a) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this act, unless otherwise directed by a highway patrolman or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this act.

(b) No provision of this act for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state the signs are required, such section shall be effective even though no signs are erected or in place.

History: En. Sec. 33, Ch. 263, L. 1955.

32-2137. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green Alone or "Go":

1. Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection of an adjacent crosswalk at the time such signal is exhibited.

2. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) Yellow Alone or "Caution" When Shown Following the Green or "Go" Signal:

1. Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

2. Pedestrians facing such signals are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.

(c) Red Alone or "Stop":

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with Green Arrow:

1. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(e) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955.

32-2138. Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" are in place such signals shall indicate as follows:

(a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles.

(b) Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

History: En. Sec. 35, Ch. 263, L. 1955.

32-2139. Flashing signals. (a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing Red (stop signal). (a) When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before en-

tering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in section 88 [32-2191] of this act.

2. Flashing Yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

History: En. Sec. 36, Ch. 263, L. 1955; amd. Sec. 2, Ch. 169, L. 1957.

Amendment

The 1957 amendment substituted "section 88" for "section 89" in subd. (b).

32-2140. Display of unauthorized signs, signals, or markings. (a) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign, or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(d) The prohibition of this section shall not apply to portable "Caution" signs placed in the vicinity of schools at those times during which school children are going to and coming from school.

(e) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

History: En. Sec. 37, Ch. 263, L. 1955.

32-2141. Interference with official traffic-control devices or railroad signs or signals. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

History: En. Sec. 38, Ch. 263, L. 1955.

32-2142(1). Persons under the influence of intoxicating liquor or of drugs. (a) It is unlawful and punishable as provided in paragraph (c) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state.

(b) It is unlawful and punishable as provided in paragraph (c) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a

degree which renders him incapable of safely driving a vehicle to drive a vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

(c) Every person who is convicted of a violation of this section will be punished by imprisonment for not more than six (6) months, or by fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by both such fine and imprisonment. On a second or subsequent conviction he shall be punished by imprisonment for not less than thirty (30) days nor more than one (1) year, or in the discretion of the court, a fine of not less than three hundred dollars ($300.00) nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment.

(d) Each and every municipality in this state is hereby given authority to enact the foregoing paragraphs (a), (b) and (c) of this section, with the word "state" in the first sentence of paragraph (b) changed in each instance to read "municipality," as an ordinance, and is hereby given jurisdiction of the enforcement of said ordinance, and of the imposition of the fines and penalties therein provided.

The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person convicted under this section or under any ordinance enacted pursuant to the authority of this section; providing, however, that the board shall have the authority after such revocation upon proper application and proper showing made to the board by the party whose license has been revoked to issue to said party a restricted operator's or chauffeur's license allowing the said party to drive a motor vehicle to and from and in the course of his business only, and such restricted license shall remain in effect at the will of said board.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 3, Ch. 201, L. 1957.

Compiler's Notes

Section 32-2142 was amended twice in the 1957 Session. Once by section 3 of Ch. 201, Laws 1957, effective March 9, 1957 and once by section 1 of Ch. 194, Laws 1957, effective July 1, 1957. Neither chapter mentioned nor contained the changes by the other chapter but each amended the section in different particulars. The amendments do not seem to conflict with each other and both would be effective if not in conflict. The section as set out above is the one as amended by Ch. 201. The section as amended by Ch. 194 is set out as 32-2142(2).

Sections 32-2142 and 32-2143 comprised Article IV of Ch. 263, Laws 1955 entitled "Driving While Intoxicated, and Reckless Driving."

Amendment

The 1957 amended added subd. (d) and in the last paragraph inserted the words "or under any ordinance enacted pursuant to the authority of this section" which appear immediately preceding the proviso clause.

32-2142(2). Persons under the influence of intoxicating liquor or of drugs. (a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle while under the influence of in-

toxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but less than 0.15 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.15 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor:

4. The foregoing provisions of paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(c) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such a drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

(d) Every person who is convicted of a violation of this section shall be punished by imprisonment in the county or city jail for not more than six (6) months or by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by both such fine and imprisonment. On a second conviction he shall be punished by imprisonment in the county or city jail for not less than ten (10) days nor more than six (6) months, to which may be added, at the discretion of the court a fine of not less than three hundred dollars ($300.00) nor more than five hundred dollars ($500.00). On the third or subsequent conviction he shall be punished by imprisonment for a term of not less than thirty (30) days nor more than one (1) year, to which may be added at the discretion of the court a fine of not less than five hundred [dollars] ($500.00) nor more than one thousand dollars ($1,000.00).

The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person convicted under this section; providing, however, that the board shall have the authority after such revocation upon proper application and proper showing made to the board by the party whose license has been revoked to issue to said party a restricted operator's or chauffeur's license allowing the said party to drive a motor vehicle to and from and in the

course of his business only, and such restricted license shall remain in effect at the will of said board.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957.

Compiler's Note

Section 32-2142 was amended twice in the 1957 Session. Once by section 3 of Ch. 201, Laws 1957, effective March 9, 1957 and once by section 1 of Ch. 194, Laws 1957, effective July 1, 1957. Neither chapter mentioned nor contained the changes by the other chapter but each amended the section in different particulars. The amendments do not seem to conflict with each other, and both would be good if they are not in conflict. The section as set out above is the one as amended by Ch. 194. The section as amended by Ch. 201 is set out as 32-2142(1).

Amendment

The 1957 amendment in subd. (a) inserted the word "motor" and substituted "upon the highways of" for "within"; added subd.(b) renumbering former subds. (b) and (c) as (c) and (d); inserted the word "motor" each time it appears in subd. (c); inserted the word "a" after the words "entitled to use such" in that subdivision; and made numerous changes in subd. (d), formerly it read: "Every person who is convicted of a violation of this section will be punished by imprisonment for not more than six (6) months, or by fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by both such fine and imprisonment. On a second or subsequent conviction he shall be punished by imprisonment for not less than thirty (30) days nor more than one (1) year, or in the discretion of the court, a fine of not less than three hundred dollars ($300.00) nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment."

Repealing Clause

Section 2 of Ch. 194, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Separability Clause

Section 3 of Ch. 194, Laws 1957 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Effective Date

Section 4 of Ch. 194, Laws 1957 provided the act should be in full force and effect from and after July 1, 1957.

32-2143. Reckless driving. (a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not more than ninety (90) days, or by fine of not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300.00), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by both such fine and imprisonment.

(c) Each and every municipality in this state is hereby given authority to enact the foregoing paragraphs (a) and (b) of this section as an ordinance, and is hereby given jurisdiction of the enforcement of said ordinance and of the imposition of the fines and penalties therein provided.

History: En. Sec. 40, Ch. 263, L. 1955, amd. Sec. 4, Ch. 201, L. 1957.

Amendment

The 1957 amendment added subd. (c).

Repealing Clause

Section 5 of Ch. 201, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 201, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

32-2144. Speed restrictions—basic rule. (a) Every person operating or driving a vehicle of any character on a public highway of this state shall drive the same in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and so as not to unduly or unreasonably endanger the life, limb, property, or other rights of any person entitled to the use of the street or highway.

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized, shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

1. Twenty-five (25) miles per hour in any urban district;

2. Thirty-five (35) miles per hour on any highways under construction or repairs;

3. Fifty-five (55) miles per hour in such other locations during the nighttime;

Daytime means from a half (½) hour before sunrise to a half (½) hour after sunset. Nighttime means at any other hour.

The speed limits set forth in this section may be altered as authorized in sections 42 and 43 [32-2145 and 32-2146].

(c) The driver of every vehicle shall, consistent with the requirements of paragraph (a), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition.

History: En. Sec. 41, Ch. 263, L. 1955. Article V of Ch. 263, Laws 1955 entitled "Speed Restrictions."

Compiler's Note

Sections 32-2144 to 32-2150 comprised

32-2145. Establishment of state speed zones. Whenever the board shall determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said board may determine and declare a reasonable and safe speed limit thereat which when appropriate signs giving notice thereof are erected shall be effective at all times or during hours of daylight or darkness or at such other times as may be determined at such intersections or other place or part of the highway.

History: En. Sec. 42, Ch. 263, L. 1955.

32-2146. When local authorities may and shall alter limits. (a) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the speed permitted under this act is greater or less than is reasonable and safe under

the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe limit thereon which:

1. Decreases the limit at intersection; or

2. Increases the limit within an urban district but not to more than fifty-five (55) miles per hour during nighttime; or

3. Decreases the limit outside an urban district, but not to less than thirty-five (35) miles per hour.

(b) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall declare a reasonable and safe limit thereon which may be greater or less than the speed permitted under this act for an urban district.

(c) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

(d) Any alteration of speed limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commission.

History: En. Sec. 43, Ch. 263, L. 1955.

32-2147. Minimum speed regulations. (a) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

Police officers or highway patrolmen are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent willful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith the continued slow operation by a driver shall be a misdemeanor, except that inability to comply with such order will not be construed as willful disobedience.

(b) Whenever the board or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the board or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

History: En. Sec. 44, Ch. 263, L. 1955.

32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers. (a) No person shall operate any truck or truck-tractor the gross weight of which exceeds six thousand (6,000) pounds at a speed greater than fifty (50) miles per hour.

(b) No person shall operate any motor-driven cycle at any time mentioned in section 112, chapter 263, Laws of 1955 [32-21-115], at a speed greater than thirty-five (35) miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred (300) feet ahead.

(c) No person shall operate a vehicle which is towing a house trailer at a speed greater than a maximum of fifty (50) miles per hour.

History: En. Sec. 45, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1957.

Amendment

The 1957 amendment in subd. (a) increased the gross weight from 4,000 pounds to 6,000 pounds and the speed from 45 miles to 50 miles and added subd. (c).

Repealing Clause

Section 2 of Ch. 241, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-2149. Special speed limitations. (a) No person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten (10) miles per hour.

(b) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(c) The board upon request from any local authority may, or upon its own initiative shall, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this act, the board shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of not less than one hundred (100) feet before each end of such structure.

(d) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said board and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

History: En. Sec. 46, Ch. 263, L. 1955.

32-2150. Charging violations. In every charge of violation of any speed regulation in this act the complaint, also the summons, or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location.

History: En. Sec. 47, Ch. 263, L. 1955.

32-2151. Drive on right side of roadway—exceptions. (a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

2. When the right half of a roadway is closed to traffic while under construction or repair;

3. Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable thereon; or

4. Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then exist-

ing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

History: En. Sec. 48, Ch. 263, L. 1955. "Driving on Right Side of Roadway—Overtaking and Passing, etc."

Compiler's Note

Sections 32-2151 to 32-2163 comprised Article VI of Ch. 263, Laws 1955 entitled

32-2152. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one (1) line of traffic in each direction each driver shall give to the other at least one-half (½) of the main-traveled portion of the roadway as nearly as possible.

History: En. Sec. 49, Ch. 263, L. 1955.

32-2153. Overtaking a vehicle on the left. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

History: En. Sec. 50, Ch. 263, L. 1955.

32-2154. When overtaking on right is permitted. (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn;

2. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction;

3. Upon a one-way street, or upon any roadway on which traffic is restricted to one (1) direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

History: En. Sec. 51, Ch. 263, L. 1955.

32-2155. Limitations on overtaking on the left. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left

side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the righthand side of the roadway before coming within one hundred (100) feet of any vehicle approaching from the opposite direction.

History: En. Sec. 52, Ch. 263, L. 1955.

32-2156. Further limitations on driving to left of center of roadway. (a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

2. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing;

3. When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.

History: En. Sec. 53, Ch. 263, L. 1955.

32-2157. No-passing zones. (a) The commission is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no-passing zone as set forth in paragraph (a) no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

History: En. Sec. 54, Ch. 263, L. 1955; amd. Sec. 1, Ch. 97, L. 1957.

Amendment

The 1957 amendment divided this section into subdivisions by adding a new subd. (b) and in subd. (a) substituted the word "or" for "and" between the words "signs" and "markings."

Repealing Clause

Section 2 of Ch. 97, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-2158. One-way roadways and rotary traffic islands. (a) The commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(b) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

History: En. Sec. 55, Ch. 263, L. 1955.

32-2159. Driving on roadways laned for traffic. Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three (3) lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

History: En. Sec. 56, Ch. 263, L. 1955.

32-2160. Following too closely. (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any truck tractor, truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

History: En. Sec. 57, Ch. 263, L. 1955.

32-2161. Driving on divided highways. Whenever any highway has been divided into two (2) roadways by leaving an intervening space or by physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section except through an opening in such physical barrier or dividing section or space or at a cross-over or intersection established by public authority.

History: En. Sec. 58, Ch. 263, L. 1955.

32-2162. Restricted access. No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

History: En. Sec. 59, Ch. 263, L. 1955.

32-2163. Restrictions on use of controlled-access roadway. The commission may by resolution or order entered in its minutes, and local authorities may by ordinance with respect to any controlled-access roadway under their respective jurisdictions prohibit the use of any such roadway by pedestrians, bicycles, or other nonmotorized traffic or by any person operating a motor-driven cycle.

The commission or the local authority adopting any such prohibitory regulation shall erect and maintain official signs on the controlled-access roadway on which such regulations are applicable and when so erected no person shall disobey the restrictions stated on such signs.

History: En. Sec. 60, Ch. 263, L. 1955.

32-2164. Required position and method of turning at intersections. The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Right Turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left Turn on Two-Way Roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) Left Turns on Other Than Two-Way Roadways. At any intersection where traffic is restricted to one (1) direction on one (1) or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(d) Placing of Markers, Buttons and Signs.

1. Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall

turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

History: En. Sec. 61, Ch. 263, L. 1955.

Compiler's Note

Sections 32-2164 to 32-2169 comprised Article VII of Ch. 263, Laws 1955 entitled "Turning and Starting and Signals on Stopping and Turning."

32-2165. Turning on curve or crest of grade prohibited. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

History: En. Sec. 62, Ch. 263, L. 1955.

32-2166. Starting parked vehicle. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

History: En. Sec. 63, Ch. 263, L. 1955.

32-2167. Turning movements and required signals. (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by section 61 [32-2164] or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

History: En. Sec. 64, Ch. 263, L. 1955.

32-2168. Signals by hand and arm or signal device. (a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps, except as otherwise provided in paragraph (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four (24) inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen (14) feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

History: En. Sec. 65, Ch. 263, L. 1955; amd. Sec. 1, Ch. 105, L. 1957.

Amendment

The 1957 amendment deleted the words "or mechanical signal device" which appeared after the words "signal lamp or lamps" in both subds. (a) and (b) and in subd. (b) substituted the word "cab" for "cap."

32-2169. Method of giving hand-and-arm signals. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left Turn. Hand and arm extended horizontally.
2. Right Turn. Hand and arm extended upward.
3. Stop or Decrease Speed. Hand and arm extended downward.

History: En. Sec. 66, Ch. 263, L. 1955.

32-2170. Vehicle approaching or entering intersection. (a) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway.

(b) When two (2) vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(c) The right-of-way rules declared in paragraphs (a) and (b) are modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955.

Compiler's Note

Sections 32-2170 to 32-2175 comprised Article VIII of Ch. 263, Laws 1955 entitled "Rights of Way."

32-2171. Vehicle turning left at intersection. The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this act, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right of way to the vehicle making the left turn. The provisions of this section shall not be applicable where it is otherwise directed by appropriate signs or signals.

History: En. Sec. 68, Ch. 263, L. 1955.

32-2172. Vehicle entering through highway or stop intersection. (a) The driver of a vehicle shall stop as required by section 92 [32-2195] of this act at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right of way to the vehicle so proceeding into or across the through highway.

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one (1) or more entrances thereto although not a part of a through

highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

History: En. Sec. 69, Ch. 263, L. 1955; amd. Sec. 3, Ch. 169, L. 1957.

Amendment

The 1957 amendment substituted "section 92" for "section 93" in subd. (a).

32-2173. Vehicle entering highway from private road or driveway. The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955.

32-2174. Vehicles approaching "Yield Right-of-Way" sign. When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield Right-of-Way" intersection, the driver of a vehicle approaching the "Yield Right-of-Way" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield Right-of-Way" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955.

32-2175. Operation of vehicles on approach of authorized emergency vehicles. (a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of section 129 [32-21-132] of this act, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrolman.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

History: En. Sec. 72, Ch. 263, L. 1955; amd. Sec. 4, Ch. 169, L. 1957.

Amendment

The 1957 amendment substituted "section 129" for "section 130" in subd. (a).

Repealing Clause

Section 5 of Ch. 169, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-2176. Pedestrians subject to traffic regulations. (a) Pedestrians shall be subject to traffic-control signals at intersections as provided in section 34 [32-2137] of this act unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article [32-2176 to 32-2183].

(b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

History: En. Sec. 73, Ch. 263, L. 1955. Article IX of Ch. 263, Laws 1955 entitled "Pedestrians' Rights and Duties."

Compiler's Note

Sections 32-2176 to 32-2183 comprised

32-2177. Pedestrians' right of way in crosswalk. (a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in section 75 (b) [32-2178 (b)].

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

History: En. Sec. 74, Ch. 263, L. 1955.

32-2178. Crossing at other than crosswalks. (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

History: En. Sec. 75, Ch. 263, L. 1955.

32-2179. Drivers to exercise due care. Notwithstanding the foregoing provisions of this article [32-2176 to 32-2183] every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

History: En. Sec. 76, Ch. 263, L. 1955.

32-2180. Pedestrians to use right half of crosswalk. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

History: En. Sec. 77, Ch. 263, L. 1955.

32-2181. Pedestrians on roadways. (a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

History: En. Sec. 78, Ch. 263, L. 1955.

32-2182. Pedestrian soliciting rides or business. (a) No person shall stand in a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

History: En. Sec. 79, Ch. 263, L. 1955.

32-2183. Intoxicated pedestrian. No person shall walk upon or along the highway while under the influence of intoxicating liquor.

History: En. Sec. 80, Ch. 263, L. 1955.

32-2184. Effect of regulations. (a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this article [32-2184 to 32-2190].

(b) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

History: En. Sec. 81, Ch. 263, L. 1955. "Operation of Bicycles and Play Vehicles."

Compiler's Note

Sections 32-2184 to 32-2190 comprised Article X of Ch. 263, Laws 1955 entitled

32-2185. Traffic laws apply to persons riding bicycles. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this act, except as to special regulations in this article [32-2184 to 32-2190] and except as to those provisions of this act which by their very nature can have no application.

History: En. Sec. 82, Ch. 263, L. 1955.

32-2186. Riding on bicycles. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

History: En. Sec. 83, Ch. 263, L. 1955.

32-2187. Clinging to vehicles. No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

History: En. Sec. 84, Ch. 263, L. 1955.

32-2188. Riding on roadways and bicycle paths. (a) Every person operating a bicycle upon a roadway shall ride as near to the right side of

the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

History: En. Sec. 85, Ch. 263, L. 1955.

32-2189. Carrying articles. No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one (1) hand upon the handle bars.

History: En. Sec. 86, Ch. 263, L. 1955.

32-2190. Lamps and other equipment on bicycles. (a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type approved by the board which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

History: En. Sec. 87, Ch. 263, L. 1955.

32-2191. Obedience to signal indicating approach of train. (a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

2. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

3. A railroad train approaching within approximately one thousand five hundred (1,500) feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

History: En. Sec. 88, Ch. 263, L. 1955. Article XI of Ch. 263, Laws 1955 entitled "Special Stops Required."

Compiler's Note

Sections 32-2191 to 32-2198 comprised

32-2192. **All vehicles must stop at certain railroad grade crossings.** The commission and local authorities are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

History: En. Sec. 89, Ch. 263, L. 1955.

32-2193. **Certain vehicles must stop at all railroad grade crossings.** (a) The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossings and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or highway patrolman or traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

History: En. Sec. 90, Ch. 263, L. 1955.

32-2194. **Moving heavy equipment at railroad grade crossings.** (a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten (10) or less miles per hour or a vertical body or load clearance of less than one-half (½) inch per foot of the distance between any two (2) adjacent axles or in any event of less than nine (9) inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen (15) feet nor more than fifty (50) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate

approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

History: En. Sec. 91, Ch. 263, L. 1955.

32-2195. Vehicles must stop at stop signs. (a) The commission with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one (1) or more entrances to such intersection.

(b) Every said sign shall bear the word "Stop" in letters not less than eight (8) inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(d) Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or highway patrolman or traffic-control signal.

History: En. Sec. 92, Ch. 263, L. 1955.

32-2196. Stop before emerging from alley, driveway, or building. The driver of a vehicle within a business or residence dictrict emerging from an alley, driveway, or building, shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

History: En. Sec. 93, Ch. 263, L. 1955.

32-2197. Overtaking and passing school bus. (a) The driver of a vehicle upon a highway outside of a business or residence district upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual signal as specified in section 129 [32-21-132] and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed as the visual signals are no longer actuated.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height, and in addition shall be equipped with visual signals meeting the requirements

of section 129 [32-21-132] of this act, which shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(d) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

History: En. Sec. 94, Ch. 263, L. 1955.

Cross-Reference

For other school bus regulations see secs. 75-3308 to 75-3311.

32-2198. Special lighting equipment on school busses. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 95, Ch. 263, L. 1955.

Cross-Reference

For other school bus regulations see secs. 75-3308 to 75-3311.

32-2199. Stopping, standing, or parking outside of business or residence districts. (a) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles; and no person shall stop, stand or park any vehicle upon such highway unless such vehicle can be seen by the driver of any other vehicle approaching, from either direction, within five hundred (500) feet and unless drivers approaching from opposite directions are visible to each other when both are at least five hundred (500) feet from the vehicle to be stopped, turned or parked, except in cases of justifiable emergency.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

History: En. Sec. 96, Ch. 263, L. 1955.

Article XII of Ch. 263, Laws 1955 entitled "Stopping, Standing, and Parking."

Compiler's Note

Sections 32-2199 to 32-21-102 comprised

32-21-100. Officers or highway patrolmen authorized to remove illegally stopped vehicles. (a) Whenever any police officer or highway patrolman finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article [32-2199 to 32-21-102] such officer or highway patrolman is hereby authorized to move such vehicle, or require the driver

or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

(b) Whenever any police officer or highway patrolman finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer or highway patrolman is hereby authorized to provide for the removal of such vehicle to the nearest place of safety.

History: En. Sec. 97, Ch. 263, L. 1955.

32-21-101. Stopping, standing, or parking prohibited in specified places. (a) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or highway patrolman or traffic-control device, in any of the following places:

1. On a sidewalk;
2. In front of a public or private driveway;
3. Within an intersection;
4. Within fifteen (15) feet of a fire hydrant;
5. On a crosswalk;
6. Within twenty (20) feet of a crosswalk at an intersection;
7. Within thirty (30) feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;
8. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;
9. Within fifty (50) feet of the nearest rail of a railroad crossing;
10. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly signposted;
11. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
14. At any place where official signs prohibit stopping.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

History: En. Sec. 98, Ch. 263, L. 1955.

32-21-102. Additional parking regulations. (a) Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen (18) inches of the right-hand curb.

(b) Local authorities may by ordinance permit parking of vehicle with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curb of a one-way roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the commission has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The commission with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing, or parking, is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

History: En. Sec. 99, Ch. 263, L. 1955.

32-21-103. Unattended motor vehicles. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway in such a manner as to prevent the vehicle from rolling onto the roadway.

History: En. Sec. 100, Ch. 263, L. 1955.

Compiler's Note

Sections 32-21-103 to 32-21-113 comprised Article XIII of Ch. 263, Laws 1955 entitled "Miscellaneous Rules."

32-21-104. Limitations on backing. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

History: En. Sec. 101, Ch. 263, L. 1955.

32-21-105. Riding on motorcycles. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

History: En. Sec. 102, Ch. 263, L. 1955.

32-21-106. Obstruction to driver's view or driving mechanism. (a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.

History: En Sec. 103, Ch. 263, L. 1955.

32-21-107. Driving on mountain highways. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible.

History: En. Sec. 104, Ch. 263, L. 1955.

32-21-108. Coasting prohibited. The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral or with the clutch manually disengaged.

History: En. Sec. 105, Ch. 263, L. 1955.

32-21-109. Following fire apparatus prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

History: En. Sec. 106, Ch. 263, L. 1955.

32-21-110. Crossing fire hose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

History: En. Sec. 107, Ch. 263, L. 1955.

32-21-111. Putting glass, etc., on highway prohibited. (a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

History: En. Sec. 108, Ch. 263, L. 1955.

32-21-112. Riding on fenders or running boards prohibited. Any person driving a vehicle shall not permit passengers to ride on the fenders or running boards nor shall any passenger ride on the fenders or running boards of a vehicle.

History: En. Sec. 109, Ch. 263, L. 1955.

32-21-112.1. Riding in house trailers. No person or persons shall occupy a house trailer while it is being moved upon a public highway.

History: Sec. 109.1, Ch. 263, L. 1955 as added by Sec. 1, Ch. 167, L. 1957.

Title of Act

An act to amend chapter 263 of the Session Laws of the Thirty-Fourth Legislative Assembly of the state of Montana, 1955, by adding thereto two new sections numbered 109.1 and 109.2, relating to riding on fenders and running boards of vehicles; by prohibiting persons from riding in trailer houses being towed along highways; by prohibiting persons from opening vehicle doors on side available to traffic when such acts create a hazard; by repealing all acts and parts of acts in conflict herewith.

32-21-112.2. Opening and closing vehicles doors. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

History: Sec. 109.2, Ch. 263, L. 1955 as added by Sec. 1, Ch. 167, L. 1957.

Repealing Clause
Section 2 of Ch. 167, Laws 1957 repealed all acts or parts of acts in conflict therewith.

32-21-113. Shooting from or across highway. No person shall shoot any firearm from or across the roadway of any state or federal highway.

History: En. Sec. 110, Ch. 263, L. 1955.

Cross-Reference
Shooting game from automobile or highway prohibited, sec. 26-301, par. 1.

32-21-114. Scope and effect of regulations. (a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article [32-21-114 to 32-21-153] or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article [32-21-114 to 32-21-153].

(b) Nothing contained in this article [32-21-114 to 32-21-153] shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this article [32-21-114 to 32-21-153].

(c) The provisions of this article [32-21-114 to 32-21-153] with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

History: En. Sec. 111, Ch. 263, L. 1955.

Compiler's Note
Sections 32-21-114 to 32-21-153 comprised Article XIV of Ch. 263, Laws 1955 entitled "Equipment."

32-21-115. When lighted lamps are required. Every vehicle upon a highway within this state at any time from a half (½) hour after sunset to a half (½) hour before sunrise and at any other time when due to insufficient light, or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of five hundred (500) feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles.

History: En. Sec. 112, Ch. 263, L. 1955.

32-21-116. Visibility distance and mounted height of lamps. (a) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within

which such lamps or devices shall be visible, said provisions shall apply during the times stated in section 112 [32-21-115] in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(b) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

History: En. Sec. 113, Ch. 263, L. 1955.

32-21-117. Head lamps on motor vehicles. (a) Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) head lamps with at least one (1) on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this article [32-21-114 to 32-21-153].

(b) Every motorcycle and every motor-driven cycle shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations of this article [32-21-114 to 32-21-153].

(c) Every head lamp upon every motor vehicle, including every motorcycle and every motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured as set forth in section 113(b) [32-21-116(b)], chapter 263 of the Session Laws of the Thirty-fourth Legislative Assembly of the state of Montana, 1955.

History: En. Sec. 114, Ch. 263, L. 1955; amd. Sec. 1, Ch. 103, L. 1957.

Amendment

The 1957 amendment in subd. (c) changed the lower minimum height of head lamps from 28 to 24 inches.

Repealing Clause

Section 2 of Ch. 103, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-21-118. Tail lamps. (a) Every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one (1) tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. And further, every such above-mentioned vehicle, other than a truck-tractor, registered in this state and manufactured or assembled after January 1, 1956, shall be equipped with at least two (2) tail lamps mounted on the rear, which when lighted as herein required, shall comply with the provisions of this section.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than twenty (20) inches.

(c) Either tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and

render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

History: En. Sec. 115, Ch. 263, L. 1955.

32-21-119. New motor vehicles to be equipped with reflectors. (a) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck-tractor, shall carry on the rear, either as a part of the tail lamps or separately, two (2) red reflectors, except that every motorcycle and motor-driven cycle shall carry at least one (1) reflector, meeting the requirements of this section, and except that vehicles of the type mentioned in section 119 [32-21-122] shall be equipped with reflectors as required in those sections applicable thereto.

(b) Every such reflector shall be mounted on the vehicle at a height not less than twenty (20) inches nor more than sixty (60) inches measured as set forth in section 113(b) [32-21-116(b)], and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred (300) feet to fifty (50) feet from such vehicle when directly in front of lawful upper beams of head lamps, except that visibility from a greater distance is hereinafter required of reflectors on certain types of vehicles.

History: En. Sec. 116, Ch. 263, L. 1955.

32-21-120. Stop lamps and turn signals required on new motor vehicles. From and after January 1, 1956, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor-driven cycle, in this state or for any person to drive such vehicle on the highways unless it is equipped with at least one (1) stop lamp meeting the requirements of section 130 [32-21-133].

History: En. Sec. 117, Ch. 263, L. 1955.

32-21-121. Application of succeeding sections. Those sections of this act which follow immediately including sections 119, 120, 121, 122, and 124 [32-21-122, 32-21-123, 32-21-124, 32-21-125, and 32-21-127] relating to clearance and marker lamps, reflectors, and stop lights, shall apply as stated in said sections to vehicles of the type therein enumerated, namely passenger busses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at all times mentioned in section 112 [32-21-115] except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet.

History: En. Sec. 118, Ch. 263, L. 1955.

32-21-122. Additional equipment required on certain vehicles. In addition to other equipment required in this act the following vehicles shall be equipped as herein stated under the conditions stated in section 118 [32-21-121].

(a) On every bus or truck, whatever its size, there shall be the following:

On the rear, two (2) reflectors, one (1) at each side, and one (1) stop light.

(b) On every bus or truck eighty (80) inches or more in over-all width, in addition to the requirements in paragraph (a):

On the front, two (2) clearance lamps, one (1) at each side.

On the rear, two (2) clearance lamps, one (1) at each side.

On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.

On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

(c) On every truck-tractor:

On the front, two (2) clearance lamps, one (1) at each side.

On the rear, one (1) stop light.

(d) On every trailer or semitrailer having a gross weight in excess of three thousand (3,000) pounds:

On the front, two (2) clearance lamps, one (1) at each side.

On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.

On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

On the rear, two (2) clearance lamps, one (1) at each side, also two (2) reflectors, one (1) at each side, and one (1) stop light.

(e) On every pole trailer in excess of three thousand (3,000) pounds gross weight:

On each side, one (1) side marker lamp and one (1) clearance lamp which may be in combination, to show to the front, side, and rear.

On the rear of the pole trailer or load, two (2) reflectors, one (1) at each side.

(f) On every trailer, semitrailer, or pole trailer weighing three thousand (3,000) pounds gross or less:

On the rear, two (2) reflectors, one (1) on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one (1) stop light.

(g) The board is hereby empowered to make additional rules and regulations governing the use of safety equipment on motor vehicles, vehicles and/or combination of vehicles, that is, trailer hitches, safety chains, mounts, tow bars and other similar equipment as it shall deem advisable for the protection of the public; provided further that any violation of any rules and regulations adopted by the board shall be deemed a misdemeanor.

History: En. Sec. 119, Ch. 263, L. 1955.

32-21-123. Color of clearance lamps, side marker lamps, reflectors and backup-up lamps. (a) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(b) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber, or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp may be white, amber, or red.

History: En. Sec. 120, Ch. 263, L. 1955.

32-21-124. Mounting of reflectors, clearance lamps, and side marker lamps. (a) Reflectors when required by section 119 [32-21-122] shall be mounted at a height not less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this act.

(b) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

History: En. Sec. 121, Ch. 263, L. 1955.

32-21-125. Visibility of reflectors, clearance lamps, and marker lamps. (a) Every reflector upon any vehicle referred to in section 119 [32-21-122] shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within six hundred (600) feet to one hundred (100) feet from the vehicle when directly in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the front and rear respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the side of the vehicle on which mounted.

History: En. Sec. 122, Ch. 263, L. 1955.

32-21-126. Obstructed lights not required. Whenever motor and other vehicles are operated in combination during the time that lights are re-

quired, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirements that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

History: En. Sec. 123, Ch. 263, L. 1955.

32-21-127. Lamp or flag on projecting load. Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in section 112 [32-21-115] hereof, a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

History: En. Sec. 124, Ch. 263, L. 1955.

32-21-128. Lamps on parked vehicles. (a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half (½) hour after sunset and a half (½) hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred (500) feet upon such street or highway no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half (½) hour after sunset and a half (½) hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred (500) feet upon such highway, such vehicle so parked or stopped shall be equipped with one (1) or more lamps meeting the following requirements: At least one (1) lamp shall display a white or amber light visible from a distance of five hundred (500) feet to the front of the vehicle, and the same lamp or at least one (1) other lamp shall display a red light visible from a distance of five hundred (500) feet to the rear of the vehicle, and the location of said lamp or lamps, shall always be such that at least one (1) lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(c) Any lighted headlamp upon a parked vehicle shall be depressed or dimmed.

History: En. Sec. 125, Ch. 263, L. 1955.

32-21-129. Lamps on farm tractors, farm equipment, and implements of husbandry. (a) Every farm tractor and every self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be

equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of such vehicle and shall also be equipped with at least one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear of such vehicle and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps. The lights required herein shall be positioned so that one (1) lamp showing to the front and one (1) lamp or reflector showing to the rear will indicate the furthest projection of said tractor, unit or implement on the side of the road used in passing such vehicle.

(b) Every combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be equipped with the following lamps:

(1) At least one (1) lamp mounted to indicate as nearly as practicable the extreme left projection of said combination and displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said combination, and

(2) Two (2) lamps each displaying a red light visible from a distance of not less than five hundred (500) feet to the rear of said combination, or as an alternative, at least one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear thereof and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear thereof when illuminated by the upper beams of headlamps, which said lamps or reflectors shall be mounted in such manner as to indicate as nearly as practicable the extreme left and right rear projections of said towed unit or implement on the highway.

(c) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be equipped with two (2) single-beam or multiple-beam headlamps meeting the requirements of sections 132 or 134 [32-21-135 or 32-21-137] of this act respectively, or as an alternative, section 136 [32-21-139] of this act, and two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or in the alternative, one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps; and such red lamps or reflectors shall be mounted in the rear of said farm tractor or self-propelled implement of husbandry so as to indicate as nearly as practicable the extreme left and right projections of said vehicle on the highway.

(d) Every combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system shall at all times mentioned in section 112 [32-21-115] be equipped with the following lamps:

(1) The farm tractor element of every such combination shall be equipped with two (2) single-beam or multiple-beam headlamps meeting the requirements of sections 132, 134, or 136 [32-21-135, 32-21-137, or 32-21-139] of this act, and

(2) The towed unit of farm equipment or implement of husbandry element of such combination shall be equipped with two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or as an alternative, one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps; and such red lamps or reflectors shall be located so as to indicate as nearly as practicable the extreme left and right projections of said towed unit or implement on the highway, and

(3) Said combination shall also be equipped with a lamp displaying a white or amber light, or any shade of color between white and amber, visible from a distance of not less than five hundred (500) feet to the front and a lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear, which said lamp or lamps shall be installed or capable of being positioned so as to indicate to the front and rear the furthest projection of said combination on the side of the road used by other vehicles in passing such combination.

History: En. Sec. 126, Ch. 263, L. 1955.

32-21-130. Lamps on other vehicles and equipment. Every vehicle, including animal-drawn vehicles and vehicles referred to in section 111 (c) [32-21-114(c)], not specifically required by the provisions of this article [32-21-114 to 32-21-153] to be equipped with lamps or other lighting devices, shall at all times specified in section 112 [32-21-115] of this act be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than five hundred (500) feet to the rear of said vehicle, or as an alternative, one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of headlamps.

History: En. Sec. 127, Ch. 263, L. 1955.

32-21-131. Spot lamps and auxiliary lamps. (a) Spot Lamps. Any motor vehicle may be equipped with not to exceed two (2) spot lamps and every lighted spot lamp shall be turned off upon approaching another moving vehicle from either direction.

(b) Fog Lamps. Any motor vehicle may be equipped with not to exceed two (2) fog lamps mounted on the front at a height not less than twelve (12) inches nor more than thirty (30) inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five (25) feet ahead

project higher than a level of four (4) inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head-lamp beams as specified in section 132 (b) [32-21-135(b)], chapter 263, Laws of 1955.

(c) Auxiliary Passing Lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary passing lamps mounted on the front at a height not less than twenty-four (24) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of section 132 [32-21-135], chapter 263, Laws of 1955, shall apply to any combination of head lamps and auxiliary passing lamps.

(d) Auxiliary Driving Lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary driving lamps mounted on the front at a height not less than sixteen (16) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of section 132 [32-21-135], chapter 263, Laws of 1955, shall apply to any combination of heads lamps and auxiliary driving lamps.

History: En. Sec. 128, Ch. 263, L. 1955;. amd. Sec. 1, Ch. 147, L. 1957.

Amendment

The 1957 amendment in subds. (c) and (d) substituted "two (2)" for "one (1)" and made the word "lamp" plural wherever used.

Repealing Clause

Section 2 of Ch. 147, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-21-132. Audible and visual signals on vehicles. (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every bus used for the transportation of school children and every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing amber lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 72 and 94 [32-2175 and 32-2197] of this act.

History: En. Sec. 129, Ch. 263, L. 1955.

32-21-133. Signal lamps and signal devices. (a) Any motor vehicle may be equipped and when required under this act shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight, and which shall be actuated upon application of the

service (foot) brake, and which may but need not be incorporated with one (1) or more other rear lamps.

(b) Any motor vehicle may be equipped and when required under this act shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. When lamps are used for such purposes, the lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred (100) feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(c) No stop lamp or signal lamp or device shall project a glaring light.

History: En. Sec. 130, Ch. 263, L. 1955; amd. Sec. 2, Ch. 105, L. 1957.

Amendment

The 1957 amendment deleted from subd. (b) the words "or mechanical signal devices" which appeared after the words "equipped with lamps" in the first sentence and also deleted from the end of subd. (b) a sentence which read "Where mechanical signal devices are used for such purposes, said devices shall be self-illuminated when in use at the times mentioned in section 112."

Repealing Clause

Section 3 of Ch. 105, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-21-134. Additional lighting equipment. (a) Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one (1) running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with not more than two (2) back-up lamps either separately or in combination with other lamps, but any such back-up lamps shall not be lighted when the motor vehicle is in forward motion.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing, and when so equipped may display such warning in addition to any other warning signals required by this act. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall

be visible from a distance of not less than five hundred (500) feet under normal atmospheric conditions at night.

History: En. Sec. 131, Ch. 263, L. 1955.

32-21-135. Multiple-beam road-lighting equipment. Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor-driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty (350) feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred (100) feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle, or motor-driven cycle, registered in this state after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

History: En. Sec. 132, Ch. 263, L. 1955.

32-21-136. Use of multiple-beam road-lighting equipment. (a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 112 [32-21-115], the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle subject to the following requirements and limitations:

(b) Whenever the driver of a vehicle approaches an oncoming vehicle within one thousand (1,000) feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver.

The lowermost distribution of light specified in Item 1 of section 132 (b) [32-21-135(b)] shall be deemed to avoid glare at all times, regardless of road contour and loading.

(c) Whenever the driver of a vehicle follows another vehicle within three hundred (300) feet to the rear, such driver shall use a distribution of light permissible under this act other than the uppermost distribution of light specified in paragraph (a) of section 132 [32-21-135].

History: En. Sec. 133, Ch. 263, L. 1955.

32-21-137. Single-beam road-lighting equipment. Head lamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to one (1) year after the effective date of this act in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

1. The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five (25) feet ahead project higher than a level of five (5) inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two (42) inches above the level on which the vehicle stands at a distance of seventy-five (75) feet ahead.

2. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred (200) feet.

History: En. Sec. 134, Ch. 263, L. 1955.

32-21-138. Lighting equipment on motor-driven cycles. The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

1. Every said head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred (100) feet when the motor-driven cycle is operated at any speed less than twenty-five (25) miles per hour and at a distance of not less than two hundred (200) feet when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles per hour, and at a distance of not less than three hundred (300) feet when the motor-driven cycle is operated at a speed of thirty-five (35) or more miles per hour.

2. In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in section 132 (a) [32-21-135(a)] and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in section 132(b) [32-21-135(b)].

3. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light at a distance of twenty-five (25) feet ahead, shall project higher than the level of the center of the lamp from which it comes.

History: En. Sec. 135, Ch. 263, L. 1955.

32-21-139. Alternate road-lighting equipment. Any motor vehicle may be operated under the conditions specified in section 112 [32-21-115] when equipped with two (2) lighted lamps upon the front thereof capable of revealing persons and objects seventy-five (75) feet ahead in lieu of lamps required in section 132 [32-21-135] or section 134 [32-21-137] provided, however, that at no time shall it be operated at a speed in excess of twenty (20) miles per hour.

History: En. Sec. 136, Ch. 263, L. 1955.

32-21-140. Number of driving lamps required or permitted. (a) At all times specified in section 112 [32-21-115], at least two (2) lighted lamps shall be displayed one (1) on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than three hundred (300) candlepower, not more than a total of four (4) of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

History: En. Sec. 137, Ch. 263, L. 1955.

32-21-141. Special restrictions on lamps. (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon a highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this code.

(c) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow-removal equipment, or on any vehicle as a means for indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

History: En. Sec. 138, Ch. 263, L. 1955.

32-21-141.1. Blinker-type red light on fireman's private vehicle—use—identification card. Firemen, when authorized by the chief of their respective department, shall be permitted to use a blinker-type red light on the front of their privately owned motor vehicles with the word "FIRE" inscribed on the lens, which lens shall not exceed five and one-half inches in diameter. This light shall be used on emergency duty only.

Any fireman displaying the emergency red light on his privately owned motor vehicle, shall also carry attached to a convenient location on the vehicle to which the red light is attached, an identification card showing the name of the owner of said vehicle, the organization to which he belongs, and bearing the signature of the chief of his department, authorizing the emergency use of said light.

History: En. Sec. 1, Ch. 154, L. 1957.

Title of Act

An act permitting the use of a red blinker-type light by firemen on their privately owned motor vehicles when on emergency duty only; describing the emergency light; providing that it shall be a misdemeanor for the misuse thereof; and containing a repealing clause.

32-21-141.2. Violation—misdemeanor. Any person violating the provisions of this act [32-21-141.1, 32-21-141.2] is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 154, L. 1957.

Repealing Clause

Section 3 of Ch. 154, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-21-142. Standards for lights on snow-removal equipment. (a) The commission shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow-removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this act. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with, and so far as possible, conform with those approved by the American association of state highway officials.

(b) It shall be unlawful to operate any snow-removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

History: En. Sec. 139, Ch. 263, L. 1955.

32-21-143. Brakes. (a) Brake Equipment Required.

1. Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two (2) separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two (2) wheels. If these two (2) separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one (1) part of the operating mechanism shall not leave the motor vehicle without brakes on at least two (2) wheels.

2. Every motorcycle and every motor-driven cycle, when operated upon a highway, shall be equipped with at least one (1) brake which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross weight of three thousand (3,000) pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes shall be so designed and connected that in case of an accidental break-away of the towed vehicle the brakes shall be automatically applied.

4. Every new motor vehicle, trailer, or semitrailer hereafter sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle, except that any vehicle having three (3) or more axles shall have brakes on the wheels of at last two (2) axels, and except any motorcycle or motor-driven cycle, or any semitrailer of less than one thousand five hundred (1,500) pounds gross weight need not be equipped with brakes.

5. One of the means of brake operation shall consist of a mechanical connection from the operating lever to the brake shoes or bands and this brake shall be capable of holding the vehicle, or combination of vehicles, stationary under any condition of loading on any upgrade or down grade upon which it is operated.

6. The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance Ability of Brakes. Every motor vehicle or combination of vehicles at all times and under all conditions of loading shall, upon application of the service (foot) brake, be capable of decelerating and developing a braking force equivalent to such deceleration according to the minimum requirements set forth herein, and also of stopping within the distances set forth herein:

	Stopping distance in feet	Deceleration in feet per second per second	Equivalent braking force in percentage of vehicle or combination weight
Passenger vehicles not including busses	25	17	53.0%
Single-unit vehicles with a manufacturer's gross vehicle weight rating of less than 10,000 pounds	30	14	43.5%
Single-unit, 2-axle vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or more	40	14	43.5%
All other vehicles and combinations with a manufacturer's gross vehicle weight rating of 10,000 or more pounds	50	14	43.5%

Compliance with standards set forth herein shall be determined either (1) by actual road tests conducted on a substantially level (not to exceed a plus or minus one per cent (1%) grade), dry, smooth, hard-surfaced road that is free from loose material, and with stopping distances measured from the actual instant braking controls are moved and from an initial speed of twenty (20) miles per hour, or else (2) by suitable mechanical tests in a testing lane which recreates such same conditions, or (3) by a combination of both methods.

Stopping distance shall be measured from the instant braking controls are moved and from an initial speed of twenty (20) miles per hour.

History: En. Sec. 140, Ch. 263, L. 1955; amd. Sec. 1, Ch. 81, L. 1957.

Amendment

The 1957 amendment in subd. 4 inserted the words "except that any vehicle having three (3) or more axles shall have brakes on the wheels of at least two (2) axles, and" and substituted the word "or" for "and except" which appears before the words "any semitrailer."

Repealing Clause

Section 2 of Ch. 81, Laws 1957 repealed all acts or parts of acts in conflict therewith.

32-21-144. Brakes on motor-driven cycles. (a) The board is authorized to require an inspection of the brake on any motor-driven cycle and to disapprove any such brake which they find will not comply with the performance ability standard set forth in section 140 [32-21-143] or which

in their opinion is not so designed or constructed as to insure reasonable and reliable performance in actual use.

(b) The registrar may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it has been determined that the brakes thereon do not comply with the provisions of this section.

(c) No person shall operate on any highway any vehicle referred to in this section in the event the board has disapproved the brake equipment upon such vehicle or type of vehicle.

History: En. Sec. 141, Ch. 263, L. 1955.

32-21-145. Horns and warning devices. (a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(d) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the board, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

History: En. Sec. 142, Ch. 263, L. 1955.

32-21-146. Mufflers, prevention of noise. (a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cut-out, by-pass, or similar device upon a motor vehicle on a highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

History: En. Sec. 143, Ch. 263, L. 1955.

32-21-147. Mirrors. Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred (200) feet to the rear of such vehicle.

History: En. Sec. 144, Ch. 263, L. 1955.

32-21-148. Windshields must be unobstructed and equipped with wipers. (a) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(b) The windshield on every motor vehicle shall be equipped with a device for clearing rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

History: En. Sec. 145, Ch. 263, L. 1955.

32-21-149. Restrictions as to tire equipment. (a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d) The commission and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon the highway would otherwise be prohibited under this act.

History: En. Sec. 146, Ch. 263, L. 1955.

32-21-150. Safety glazing material in motor vehicles. (a) On and after January 1, 1956, no person shall sell any new motor vehicle as specified herein, nor shall any new motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glazing material wherever glazing material is used in doors, windows, and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger busses and school busses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall apply to all glazing material used in doors, windows, and windshields in the driver's compartments of such vehicles.

(b) The term "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially in comparison with ordinary sheet glass or plate glass, the likelihood

of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

History: En. Sec. 147, Ch. 263, L. 1955.

32-21-151. Certain vehicles to carry flares or other warning devices. (a) No person shall operate any motor truck of one (1) ton capacity or greater, passenger bus, or truck tractor upon any highway outside the corporate limits of municipalities at any time unless there shall be carried in such vehicle the following equipment except as provided in paragraph (b):

1. At least three (3) flares or three (3) red electric lanterns or three (3) portable red emergency reflectors each of which shall be capable of being seen and distinguished at a distance of not less than six hundred (600) feet under normal atmospheric conditions at nighttime.

No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to display a minimum of twenty-four (24) square inches of reflective surface, or two (2) reflecting elements; one above the other, either of which shall be capable of reflecting red light clearly visible from all distances within six hundred (600) feet to one hundred (100) feet under normal atmospheric conditions at night when directly in front of lawful upper beams of headlamps.

2. At least three (3) red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried.

3. At least two (2) red-cloth flags, no less than twelve (12) inches square, with standards to support such flags.

(b) No person shall operate at the time and under the conditions stated in paragraph (a) any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there shall be carried in such vehicle three (3) red electric lanterns or three (3) portable red emergency reflectors meeting the requirements of paragraph (a) of this section, and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame.

History: En. Sec. 148, Ch. 263, L. 1955; amd. Sec. 1, Ch. 108, L. 1957.

Amendment

The 1957 amendment in subd. (a) inserted the words "of one (1) ton capacity or greater" and deleted the words "from a half (½) hour after sunset to a half (½) hour before sunrise" which appeared between the words "time" and "unless."

Repealing Clause

Section 2 of Ch. 108, Laws 1957 repealed all acts and parts of acts in conflict therewith.

32-21-152. Display of warning devices when vehicle disabled. (a) Whenever any motor truck, passenger bus, truck, tractor, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in paragraph (b):

1. A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

2. As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three (3) liquid burning flares (pot torches), or three (3) lighted red electric lanterns or three (3) portable red emergency reflectors on the traveled portion of the highway in the following order:

(I) One (1), approximately one hundred (100) feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

(II) One (1), approximately one hundred (100) feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

(III) One (1), at the traffic side of the disabled vehicle not less than ten (10) feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with paragraph (I) of this section, it may be used for this purpose.

(b) Whenever any vehicle referred to in this section is disabled within five hundred (500) feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than five hundred (500) feet from the disabled vehicle.

(c) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in paragraphs (a) and (e) of this section shall be placed as follows:

One (1) at a distance of approximately two hundred (200) feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one (1) at a distance of approximately one hundred (100) feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; one (1) at the traffic side of the vehicle and approximately ten (10) feet from the vehicle in the direction of the nearest approaching traffic.

(d) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any municipality at any time when the display of fusees, flares, red electric lanterns or portable red emergency reflectors is not required, the driver of the vehicle shall display two (2) red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, or at a distance of approximately one hundred (100) feet in advance of the vehicle, and one (1) at a distance of approximately one hundred (100) feet to the rear of the vehicle.

(e) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using

compressed gas as a fuel, is disabled upon any highway of this state at any time or place mentioned in paragraph (a) of this section, the driver of such vehicle shall immediately display the following warning devices: one (1) red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle and two (2) red electric lanterns or portable red reflectors, one (1) placed approximately one hundred (100) feet to the front and one (1) placed approximately one hundred (100) feet to the rear of the disabled vehicle in the center of the traffic lane occupied by such vehicle. Flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this paragraph.

(f) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of section 148 [32-21-151] applicable thereto.

History: En. Sec. 149, Ch. 263, L. 1955.

32-21-153. Vehicles transporting explosives. Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "EXPLOSIVES" in letters not less than eight (8) inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four (24) inches square marked with the word "DANGER" in white letters six (6) inches high.

(b) Every said vehicle shall be equipped with not less than two (2) fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The board is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highway as it shall deem advisable for the protection of the public.

History: En. Sec. 150, Ch. 263, L. 1955.

Cross-Reference

Other provisions relating to marking vehicles transporting explosives, secs. 69-1925, 69-1926.

32-21-154. Vehicles without required equipment or in unsafe condition. No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

History: En. Sec. 151, Ch. 263, L. 1955.

Compiler's Note

Sections 32-21-154 to 32-21-156 comprised Article XV of Ch. 263, Laws 1955 entitled "Inspection of Vehicles."

32-21-155. Inspections by officers of the department. (a) The supervisor, members of the state highway patrol, and such other officers and employees of the department as the supervisor may designate, may at any time upon reasonable cause to believe that a vehicle is unsafe or not

equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

(b) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such inspection may issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(c) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment the officer shall give a written notice to the driver and shall send a copy to the board. Said notice shall specify the deficiencies and require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment within five (5) days.

History: En. Sec. 152, Ch. 263, L. 1955.

32-21-156. Owners and drivers to comply with inspection laws. (a) No person driving a vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the supervisor or an authorized officer or employee of the department.

(b) Every owner or driver, upon receiving a notice as provided in section 152 [32-21-155], shall comply therewith and shall within five (5) days have the deficiencies corrected and shall forward notification of such correction to the board. In lieu of compliance with this paragraph the vehicle shall not be operated, except as provided in the next succeeding paragraph.

(c) No person shall operate any vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or place of business of the owner or driver, if within a distance of twenty (20) miles, or to a garage, until said vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this act.

History: En. Sec. 153, Ch. 263, L. 1955.

32-21-157. Penalties for misdemeanor. (a) It is a misdemeanor for any person to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this act for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) or by imprisonment for not more than ten (10) days; for a second conviction within one (1) year thereafter such person shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than

five hundred dollars ($500.00) or by imprisonment for not more than six (6) months or by both fine and imprisonment.

(c) On failure of payment of fines, the offender, in cases of misdemeanor, shall be imprisoned in the county jail in the county in which the offense has been committed, and said imprisonment shall be computed upon the basis of two dollars ($2.00) of said fine for each day's incarceration.

(d) Upon conviction the court costs, or any part thereof, may also be assessed against the defendant in the discretion of the court.

History: En. Sec. 154, Ch. 263, L. 1955.

Compiler's Note

This section comprised Article XVI of Ch. 263, Laws 1955 entitled "Penalties and Disposition of Fines and Forfeitures."

32-21-158. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 155, Ch. 263, L. 1955.

Compiler's Note

Sections 32-21-158 to 32-21-160 comprised Article XVII of Ch. 263, Laws 1955 entitled "Effect of and Short Title of Act."

32-21-159. Short title. This act may be cited as the Uniform Act Regulating Traffic on Highways.

History: En. Sec. 156, Ch. 263, L. 1955.

32-21-160. Constitutionality. If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional.

History: En. Sec. 157, Ch. 263, L. 1955.

Repealing Clause

Section 158 of Ch. 263, Laws 1955 read "Repeal. That sections 31-107, Revised Codes of Montana, 1947, as amended by section 1, chapter 94, Laws of 1949, 31-108, Revised Codes of Montana, 1947, as amended by section 1, chapter 118, Laws of 1949, 31-109, 32-801, 32-802, 32-803, 32-804, 32-805, 32-806, 32-1011, 32-1015, 32-1017, 32-1101, 32-1102, 32-1103, Revised Codes of Montana, 1947, as amended by section 1, chapter 70, Laws of 1949, 32-1104, 32-1105, 32-1106, 32-1107, 32-1108, 32-1109, 32-1111, 32-1132, 32-1133, 32-1134, 32-1135, 32-1136, 32-1137, 32-1138, 32-1139, 32-1140, 32-1141, 32-1142, 32-1146, 32-1611, 32-1612, 69-1913, 69-1915, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 159 of Ch. 263, Laws 1955 read "Time of Taking Effect. This act shall be in full force and effect from and after July 1, 1955."

TITLE 35—HOUSING

Chapter 1. Housing authorities law, 35-103, 35-103.1, 35-104, 35-109, 35-123, 35-125 to 35-125.2.
4. Emergency war and veterans' housing facilities, 35-408 to 35-414.

CHAPTER 1—HOUSING AUTHORITIES LAW

Section 35-103. Definitions.
35-103.1. Low rent housing for elderly families.
35-104. Notice, hearing and creation of authority.
35-109. Powers of authority.
35-123. Contracts with federal government.
35-125. Additional powers of authority.
35-125.1. Payments by housing authorities to local bodies.
35-125.2. Act controlling.

35-103. (5309.3) **Definitions.** The following terms, wherever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) . * * * [Same as parent volume.]

(2) "City" shall mean any city which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) and (4). * * * [Subdivisions (3) and (4), same as parent volume.]

(5) "Municipality" shall mean any city, town or incorporated village, which is located within the territorial boundaries of an authority.

(6) to (17). * * * [Subdivisions (6) to (17), same as parent volume.]

(18) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(19) "Elderly families" shall mean families the head of which (or his spouse) is sixty-five years of age or over and who otherwise qualify as "persons of low income" within the meaning of the definition set forth in (18) above.

History: En. Sec. 3, Ch. 140, L. 1935; amd. Sec. 1, Ch. 193, L. 1957.

Amendment

The 1957 amendment in subd. (2) substituted the words "any city" for the words "the city of the first or second class"; in subd. (5) deleted the words "other than the city as defined above" which appeared after the word "village" and added subds. (18) and (19).

35-103.1. Low rent housing for elderly families. For the purpose of increasing the supply of low-rent housing for elderly families, an authority may develop, construct and operate new housing or acquire, remodel and operate existing housing in order to provide accommodations designed specifically for such elderly families; provided, that any application of the authority for federal financial assistance for such housing for elderly families shall first be approved by the council by resolution duly adopted. Notwithstanding the provisions of this or any other law, an authority, in respect to dwelling units suitable to the needs of elderly families, may extend a prior preference in occupancy to such elderly families; provided,

that an authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority.

History: En. 35-103.1 by Sec. 2, Ch. 193, L. 1957.

35-104. (5309.4) **Notice, hearing and creation of authority.** Any twenty-five (25) residents of a city and of the area within ten (10) miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten (10) days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three (3) public places within the city, at least ten (10) days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council must draft an ordinance authorizing the mayor to appoint five (5) commissioners to act as an authority, which said ordinance shall not be effective until it has been approved by a majority vote of the electors within the city limits voting, either at a special or general election. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of the state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners; (2) the name, and official residence of each of the commis-

sioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this act; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this act, under the seal of the state, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten (10) miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city. In case an area lies within ten (10) miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. No housing authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three (3) months shall have expired from the date of the denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceedings involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state shall be admissible in evidence in any such suit, action

or proceeding, and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 4, Ch. 140, L. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957.

Amendment

The 1957 amendment in the first sentence of the ninth paragraph substituted the words "unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city" for the words "nor any area included within the boundaries of another authority" and in the same paragraph inserted the sentence "No housing authority shall operate * * *."

35-109. (5309.9) **Powers of authority.** An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe, or unsanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city, municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, options or property rights or for the furnishing of property or services in connection with a project;

To arrange with the state, its subdivision and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government;

To acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project;

To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this act; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this act, to carry into effect the powers and purposes of the authority;

To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

Any of the investigations or examinations provided for in this act may be conducted by the authority or by a commmittee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions.

An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, includ-

ing any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this act. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Before any housing projects or additional units to existing housing projects shall be undertaken by an authority or a contract with the federal government shall be executed therefor, the city or town council must pass an ordinance authorizing the same, and said ordinance shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting either at a special or general election. Provided, however, that provisions on elections herein contained shall not be applicable to repair, maintenance, painting or remodeling of existing units nor to applications on file with the public housing administration on the effective date of this act.

History: En. Sec. 9, Ch. 140, L. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957.

Amendment

The 1957 amendment inserted the words "by an authority" and "with the federal government shall" in the first sentence of the last paragraph.

35-123. (5309.23) **Contracts with federal government.** In addition to the powers conferred upon the authority by other provisions of this act, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this act to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. In any contract with the federal government for annual contributions to an authority, the authority may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws) to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject; such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project in accordance with the terms of such contract; provided, that the contract requires that, as soon

as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted. It is the purpose and intent of this act to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this act to undertake.

History: En. Sec. 23, Ch. 140, L. 1935; amd. Sec. 5, Ch. 193, L. 1957.

Amendment

The 1957 amendment inserted the second sentence beginning "In any contract with the federal government * * *."

35-125. (5309.25) Additional powers of authority. A housing authority shall have the power (notwithstanding anything to the contrary contained in this act or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to the financial aid of the project.

History: En. Sec. 25, Ch. 140, L. 1935; amd. Sec. 4, Ch. 153, L. 1941; amd. Sec. 6, Ch. 193, L. 1957.

Amendment

The 1957 amendment inserted after the statement in parentheses the words "to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and"; inserted "salaries or" between "minimum" and "wages" and substituted "the" for "its" before the word "financial."

35-125.1. Payments by housing authorities to local bodies. Notwithstanding any limitations in this or any other law, any housing authority may agree to make such payments to the county, city or municipality, the state, or any political subdivision or agency thereof (which payments such bodies are hereby authorized to accept) as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this housing authorities law.

History: En. Sec. 35-125.1 by Sec. 7, Ch. 193, L. 1957.

35-125.2. Act controlling. Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 9, Ch. 193, L. 1957.

Severability Clause

Section 8 of Ch. 193, Laws 1957 read "Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as

to which it is held invalid, shall not be affected thereby."

Repealing Clause

Section 10 of Ch. 193, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 193, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

CHAPTER 4—EMERGENCY WAR AND VETERANS' HOUSING FACILITIES

Section 35-408. Purpose.
35-409. Definitions.
35-410. Authority of local agencies to acquire housing.
35-411. Administration of housing facilities.
35-412. Exemption from rental and tenant selection provisions of housing authority law.
35-413. Prior acts validated.
35-414. Termination of operation.

35-408. Purpose. It is hereby declared that there exists a housing shortage in the state of Montana. That of the hundreds of veterans dismissed from the military service, many of such veterans and other persons are still unable to find adequate housing for themselves or their families, and by reason thereof are being compelled to live in unsafe, unsanitary and congested dwellings. That by virtue of the Housing Act of 1950, being Title II, Chapter 94, Public Law 475 of the laws of the Eighty-first Congress Second Session, war and veterans' housing projects constructed in the state of Montana by federal government will be destroyed and removed unless otherwise provided for. That the adoption of this act will enable many veterans and their families to maintain their status in the community and conduct their employment without worry as to the health, sanitary conditions and welfare of their families.

History: En. Sec. 1, Ch. 9, L. 1955.

Compiler's Note

Chapter 9 of Laws 1955 contained a preamble which read as follows:

"WHEREAS, the Thirty-second Legislative Assembly of the state of Montana in the year 1951 did enact into law chapter 41 of the Session Laws of said assembly providing for the acquisition and operation of temporary and emergency war and veterans' housing facilities by local agencies, and

"WHEREAS, by the terms and provisions of chapter 41 of the Session Laws of 1951, it is provided that in no event shall housing facilities be operated and maintained by any local agency after the first day of May, 1955, and

"WHEREAS, if permitted to expire, great hardship will result to veterans and their families now unable to find other accommodations."

Title of Act

An act to provide for the operation of temporary and emergency war and veterans' housing facilities by local agencies.

35-409. Definitions. The following terms, whenever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Local agency" means any county, city, town, school district, or housing authority of the state.

(2) "Housing" means any temporary war or veterans' housing acquired from the United States of America under the terms and provisions of the Housing Act of 1950, being Title II, Chapter 94, Public Law 475, of the laws of the Eighty-first Congress, Second Session, for the purpose

of providing temporary housing for veterans and for families of servicemen, located within the boundaries of any local agency.

(3) "Veterans" includes, in so far as permitted by federal law, any person who has served in the military or naval forces of the United States and has been discharged or released therefrom under conditions other than dishonorable.

(4) "Families of servicemen" includes, in so far as permitted by federal law, the families of any person who is serving in the military or naval forces of the United States, and the unmarried widow of a deceased veteran.

(5) "Families" is limited to the spouse and legal dependents who are members of the household.

History: En. Sec. 2, Ch. 9, L. 1955.

35-410. Authority of local agencies to acquire housing. For the purposes of this act, any local agency may expend or use its funds and employ its personnel to do anything necessary to maintain housing acquired under the terms of the Federal Public Housing Act of 1950, and may remodel, repair, or remove and re-erect such housing facilities, but shall not erect or construct new housing facilities. The local agency may also provide for the installation of necessary appurtenances and utilities. For the purposes of this act, any local agency may enter into agreements with the federal government pursuant to the Housing Act of 1950.

History: En. Sec. 3, Ch. 9, L. 1955.

35-411. Administration of housing facilities. The local agency shall administer any housing facility acquired pursuant to this act and shall let or lease accommodations therein to veterans and families of servicemen upon such terms and for such rentals as is reasonable, but in such manner as to secure, in so far as practical, a return of the investments made by it; provided, however, that before any return of investments in such housing shall accrue to any housing authority there shall first be paid to any state and/or political subdivision thereof, annual sums in lieu of taxes which amounts so paid for any year, upon such property, shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such further allowances as may be considered to be appropriate for expenditures by the government for streets, utilities or other public services to serve such property.

History: En. Sec. 4, Ch. 9, L. 1955.

35-412. Exemption from rental and tenant selection provisions of housing authority law. In providing housing for veterans and other families, single veterans, and families of servicemen, pursuant to the provisions of this act, a housing authority shall not be subject to any of the provisions of the housing authority law relating to rentals and tenant selection.

History: En. Sec. 5, Ch. 9, L. 1955.

35-413. Prior acts validated. Any and all contracts, undertakings, and commitments, together with acts and proceedings in respect thereto, here-

tofore done or undertaken by any local agency for the provisions of housing for veterans and their families or single veterans and families of servicemen are hereby validated and declared legal.

History: En. Sec. 6, Ch. 9, L. 1955.

35-414. Termination of operation. The operation and maintenance of any housing facility acquired pursuant to this act may be terminated at any time if consistent with the terms of the federal act under which it was acquired, or if the legislature determines that the necessity therefor no longer exists, but in no event shall such housing facility be operated and maintained by any local agency after the first day of May, 1959.

When any housing facility is discontinued, in whole or in part, it shall be liquidated in such manner as will secure the greatest return to the local agency; provided, however, that any lands acquired under this act may be retained by the local agency. The term "liquidated" as used in this section, in so far as the same pertains to any temporary housing facility dwelling structures, shall mean and include dismantling, and disposal thereof by the local agency for purposes other than a dwelling place for human beings.

History: En. Sec. 7, Ch. 9, L. 1955.

Repealing Clause

Section 8 of Ch. 9, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 9, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 1, 1955.

TITLE 38—INSANE AND FEEBLE MINDED

Chapter 1. The Montana state hospital—management, 38-111.
2. Examination of persons mentally deranged—commitment, 38-208.2, 38-208.3, 38-209, 38-211, 38-214.
4. Examination and commitment of person as mentally deranged but not dangerous—voluntary application for admission, 38-410 to 38-412.
5. Parole of patients, 38-502 to 38-507.
7. State hospital for inebriates, 38-707, 38-708.

CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

Section 38-111. Periodic medical examination.

38-111. Periodic medical examination. It shall be the duty of the hospital medical staff to examine patients who have curable diseases every six months.

History: En. Sec. 3, Ch. 165, L. 1943; amd. Sec. 1, Ch. 153, L. 1957.

Amendment

The 1957 amendment deleted from the end of this section the words "and file a written report with the board giving the name of the patient and the name of the place from which the patient was committed, and the name and address of at least one of the relations of the patient if such can be ascertained."

Repealing Clause

Section 2 of Ch. 153, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED—COMMITMENT

Section 38-208.2. Legal commitment within 5 days after emergency admission.
38-208.3. Cost of commitment proceedings.
38-209. Delivery of insane person at state hospital.
38-211. Fees of physicians.
38-214. Hearing and examination of insane person—maintenance—contribution by relatives—when had.

38-201. (1431) Examination before magistrate—affidavit and warrant, etc.

References

Cited or applied in State v. Kitchens, — M —, 286 P 2d 1079, 1080.

38-208.2. Legal commitment within 5 days after emergency admission. Within five (5) days after the admission to the state hospital of patients who have not been legally committed as hereinbefore provided, the superintendent or acting superintendent of said hospital shall have such patients legally committed thereto by the district court of the third judicial district of the state of Montana in and for the county of Deer Lodge or shall release and discharge such patients from said hospital, if, by reason of the absence of the district judge of the third judicial district of the state of Montana, in and for the county of Deer Lodge, or, if a jury trial is being held by such district judge, and prevents the handling of said matter as aforementioned, the patient shall be legally committed as soon after the return of the district judge as possible, or as soon as the district judge is available to attend to such admission.

History: En. Sec. 2, Ch. 182, L. 1953; amd. Sec. 1, Ch. 92, L. 1957.

Amendment

The 1957 amendment added all that portion of this section beginning with the words "if, by reason of the absence of the district judge * * *" to end of section.

Repealing Clause

Section 2 of Ch. 92, Laws 1957 repealed all acts and parts of acts in conflict therewith.

38-208.3. Cost of commitment proceedings. In all cases provided for by this act the costs of commitment proceedings shall be paid by the county of the patients' residences, and, after the order of commitment has been signed by the district judge of the third judicial district of the state of Montana, in and for the county of Deer Lodge, said order and all other papers relative to the commitment of said person shall be forwarded by the clerk of the district court in and for the county of Deer Lodge, to the clerk of the district court of the county of the patients' residences, or of the county from which the patient has been sent to the state hospital, and shall be placed on record and filed in that office, and shall not be placed on record and filed in the office of the clerk of the district court of Deer Lodge County, unless the patient is a resident of, or has been sent from Deer Lodge County.

History: En. Sec. 3, Ch. 182, L. 1953; amd. Sec. 1, Ch. 77, L. 1955; amd. Sec. 1, Ch. 127, L. 1957.

Amendments

The 1955 amendment substituted the words "patient's residence" for the words "patients' residences" and added the exception clause.

The 1957 amendment substituted the words "patients' residences" for the words "patient's residence" and the words "and, after the order of commitment has been signed * * *" to end of section for the exception clause added by 1955 amendment which read "except that when the state hospital cannot determine the legal residence, the costs shall be paid by the county from which the certificate of the county physician is issued."

Repealing Clauses

Section 2 of Ch. 77, Laws 1955 and Sec. 2 of Ch. 127, Laws 1957 repealed all acts and parts of acts in conflict therewith.

38-209. (1439) **Delivery of insane person at state hospital.** The insane person, together with the order of the judge, and the certificate of the physicians must be delivered to the sheriff of the county in which said order is made, or to a responsible relative or friend, as determined by the judge who signs said order, and by him must be delivered to the officer in charge of the Montana state hospital. The superintendent or person in charge of the state hospital for the insane may refuse to receive any person upon any order, if the papers presented do not comply with the provisions of this chapter.

History: Ap. p. Sec. 2308, Pol. C. 1895; amd. Sec. 5, p. 164, L. 1897; re-en. Sec. 1142, Rev. C. 1907; re-en. Sec. 1439, R. C. M. 1921; amd. Sec. 5, Ch. 117, L. 1939; amd. Sec. 1, Ch. 181, L. 1957. Cal. Pol. C. Sec. 2172.

Amendment

The 1957 amendment inserted the words "in which said order is made, or to a responsible relative or friend, as determined by the judge who signs said order" in the first sentence.

Repealing Clause

Section 2 of Ch. 181, Laws 1957 repealed all acts and parts of acts in conflict therewith.

38-211. (1441) **Fees of physicians.** The physicians attending each examination of an insane person are allowed each such fee as may be fixed and determined by the court and in addition their actual traveling

expenses, not to exceed the sum of ten cents (10¢) for each and every mile actually and necessarily traveled by said physician in attending said examination, and in returning to his home therefrom, to be paid by the county treasurer of the county, where the examination was had, on the order of the judge.

The clerk of the district court must give to such physician a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the county treasurer.

History: Ap. p. Sec. 2310, Pol. C. 1895; re-en. Sec. 1144, Rev. C. 1907; amd. Sec. 1, Ch. 84, L. 1911; re-en. Sec. 1441, R. C. M. 1921; amd. Sec. 7, Ch. 117, L. 1939; amd. Sec. 1, Ch. 134, L. 1957.

Amendment

The 1957 amendment substituted the words "each such fee as may be fixed and determined by the court" for the words "five dollars" in the first paragraph.

Effective Date

Section 2 of Ch. 134, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

38-214. (1444) **Hearing and examination of insane person—maintenance—contribution by relatives—when had.** (1) When the judge has fixed the time for hearing and examination, as provided in section 38-201, the clerk of court must immediately deliver to the county board of public welfare a written notice giving the name of person named in the affidavit and warrant, his place of residence, and the name of the person making the affidavit, and some member of the staff of such board must within thirty (30) days after the notice is served on the board make an investigation to ascertain and determine the financial condition of the person named in such affidavit and warrant, the property and value thereof, if any be owned by such person, the income, if any, therefrom, names of relatives, if any, legally liable for the support and maintenance of such person, and their financial condition and ability to pay the cost of such proceeding, transportation to the Montana state hospital, and care and maintenance of such person therein, and shall make a written report of such investigation and file the same with the clerk of the court and serve a copy of the report upon the superintendent of the Montana state hospital.

(2) It shall be the duty of the judge, before whom the sanity hearing is had, to take evidence as to the financial worth of said person, the property and value thereof owned by him, if any, and the income, if any therefrom, and the financial condition and ability of any and all persons legally liable for his support and maintenance to pay the costs of such proceeding, transportation to the state hospital and care and maintenance of such person therein, and when the report of the member of the staff of the county public welfare board making the aforesaid investigation has been filed in the office of the clerk of the court it shall be considered and deemed a part of such evidence. All evidence introduced shall be reduced to writing and filed in the office of the clerk of said court, together with all orders, subpoenas, affidavits, complaints, warrants and papers used on said hearing or made by said judge, and said clerk shall enter upon the journal of the minutes of probate proceedings a record of all proceedings had, in the same manner as proceedings in probate. Copies of all the evidence relating to the financial condition of the person shall be sent to the superintendent of the Montana state hospital.

(3) If, after all of the evidence, including the welfare report has been filed as aforementioned, it appears from said evidence that such person has any means, money or property out of which the costs of the proceeding, transportation to the state hospital and his maintenance therein, or any part thereof could be paid, it shall be the duty of the judge before whom such hearing is had, to issue a citation to any person or persons in possession of such property, or any thereof, and to the relatives of such person, if any there be in the county of which such person is a resident, citing them to appear and show cause why a guardian should not be appointed for such person, and why said guardian should not be ordered to pay the costs of such proceeding, transportation to the state hospital and cost of the maintenance of such person, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided by sections 91-4301 to 91-4322, and if it appears to the court that such person has property that can be applied towards the payment of the costs of the proceeding, transportation to the state hospital and his maintenance therein, it shall be the duty of the court to make an order to that effect, stating how much of such person's property shall be so applied, the amount to be fixed with due regard to the proper preservation of the estate of such person, provided that the amount fixed for the maintenance of such person in such hospital shall not, in any event, exceed the sum of three dollars ($3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter shall not exceed the sum of two dollars ($2.00) per day. If it appears to the court that such person has no means, money or property, or not sufficient means, money or property, to pay the costs of the proceeding, transportation to the state hospital and his maintenance therein, but has relatives who are legally liable for his maintenance and support, and upon whom citation has been served as herein provided, who are financially able to pay such costs of proceedings, transportation and maintenance, or a part thereof, it shall be the duty of the court to make an order to that effect, stating therein the names of such relatives, and requiring them to pay such costs of proceedings, transportation and maintenance, in such hospital, or so much thereof as may be fixed in such order; provided that the amount fixed for the maintenance of such person in such hospital shall not, in any event, exceed the sum of three dollars ($3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter shall not exceed the sum of two dollars ($2.00) per day.

(4) If it appears to the court that such person is an indigent and has no relatives legally liable for his support and maintenance the court shall make an order so stating and that such person is to be received at such hospital as an indigent person.

(5) Whenever any order is made by the court directing the payment of the costs of proceeding, transportation and maintenance or any part thereof of any person out of the estate of such person, or by any relatives thereof legally liable for his support and maintenance, such order must be filed in the office of the clerk of the court and such court must make duplicate certified copies thereof, delivering one thereof to the board of

county commissioners of such county and transmitting the other thereof to the superintendent of the Montana state hospital.

History: En. Sec. 8, p. 165, L. 1897; re-en. Sec. 1147, Rev. C. 1907; re-en. Sec. 1444, R. C. M. 1921; amd. Sec. 9, Ch. 117, L. 1939; amd. Sec. 3, Ch. 76, L. 1943; amd. Sec. 1, Ch. 49, L. 1955. Cal. Pol. C. Secs. 2179-2180.

Amendment

The 1955 amendment in subd. (1) substituted the words "within thirty (30) days after the notice is served on the board" for the words "without delay" and the words "and serve a copy of the report upon the superintendent of the Montana state hospital" for the words "prior to the time set for such hearing and examination"; deleted from the beginning of subd. (2) the words "On the hearing and examination, if the person is adjudged to be insane and an order is made committing him to the state hospital, or if it is adjudged that there is reason to believe that his mind is disordered to such an extent that he should be placed in hospital for observation for the purpose of ascertaining and determining his condition of mind and whether he should be committed to such hospital and an order is made therefor," made several minor changes throughout subd. (2) and added the present last sentence; in the beginning of subd. (3) between the words "If" and "it" inserted the following "after all of the evidence, including the welfare report has been filed as aforementioned," and substituted the words "the sum of three dollars ($3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter shall not exceed the sum of two dollars ($2.00) per day" for the words "one dollar ($1.00) per day" both times they appear; subd. (5) above was formerly part of subd. (4).

Repealing Clause

Section 2 of Ch. 49, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

Section 38-410. Determination of financial ability—procedure.
38-411. Maximum charges.
38-412. Later commitment—court to make order relative to charges.

38-410. Determination of financial ability—procedure. At the time the judge makes his order directing that a person who has signed a voluntary application for admission to the Montana state hospital be admitted to said hospital he shall follow the same procedure relative to determining the financial ability of such person as set forth in section 38-214 and the clerk of the district court and the county board of public welfare shall also follow the same procedure as set forth in section 38-214.

History: En. Sec. 1, Ch. 129, L. 1955.

Title of Act

An act to provide for the payment of the cost of care and maintenance at the Montana state hospital by those who make a voluntary application for admission to the Montana state hospital and fixing the amount to be charged therefor.

38-411. Maximum charges. The charge for the cost of care and maintenance of a person who is admitted to the Montana state hospital as a voluntary applicant shall not exceed the following amounts: Three dollars ($3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter not to exceed the sum of two dollars ($2.00) per day.

History: En. Sec. 2, Ch. 129, L. 1955.

38-412. Later commitment—court to make order relative to charges. Should a voluntary applicant later be committed to the Montana state

hospital by an order made by a district judge under the provisions of section 38-405 or section 38-406, he shall again make an order relative to the charges for the cost of care and maintenance in accordance with the aforementioned investigation and report and all the evidence submitted at the hearing on the voluntary application.

History: En. Sec. 3, Ch. 129, L. 1955.

Repealing Clause

Section 4 of Ch. 129, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—PAROLE OF PATIENTS

Section 38-502. Convalescent leave of patients from Montana state hospital.
38-503. Permitting patient to leave.
38-504. Termination of convalescent leave.
38-505. Report by person under whom patient is placed on convalescent leave.
38-506. Support of patient placed on convalescent leave, discharged by lapse of time.
38-507. Clothing for patient on convalescent leave or discharged patient.

38-502. Convalescent leave of patients from Montana state hospital. The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state board of commissioners for the insane.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957.

Amendment

The 1957 amendment substituted the words "convalescent leave" for the word "parole."

38-503. Permitting patient to leave. A patient of the Montana state hospital may be permitted by the superintendent to leave the institution on convalescent leave and remain in the custody of a parent, relative, legal guardian or other person.

History: En. Sec. 3, Ch. 145, L. 1941; amd. Sec. 2, Ch. 152, L. 1957.

Amendment

The 1957 amendment substituted the words "convalescent leave" for the word "parole."

38-504. Termination of convalescent leave. All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state board of commissioners for the insane, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state board of commissioners for the insane, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state board of commissioners for the insane, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

History: En. Sec. 4, Ch. 145, L. 1941; amd. Sec. 3, Ch. 152, L. 1957.

Amendment

The 1957 amendment substituted the words "convalescent leave" for the word "parole" each time they appear.

38-505. Report by person under whom patient is placed on convalescent leave. The person to whom such person shall be placed on con-

valescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state board of commissioners for the insane may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

History: En. Sec. 5, Ch. 145, L. 1941; amd. Sec. 4, Ch. 152, L. 1957.

Amendment

The 1957 amendment substituted the words "placed on convalescent leave" for the word "paroled."

38-506. Support of patient placed on convalescent leave, discharged by lapse of time. The Montana state hospital placing a patient on convalescent leave as aforesaid shall not be liable for his support while on convalescent leave. Such liability shall devolve upon the legal guardian, parent, or person or persons under whose care the patient is placed on convalescent leave, or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found, shall be responsible for providing relief and care for such patient on convalescent leave who is unable to maintain himself, or who is unable to secure support from the person under whose care he was placed on convalescent leave, as for any other person in need of relief and care, under the provisions of the public welfare laws. The person under whose care the patient is placed on convalescent leave or any other person legally liable for his support, shall, if such convalescent leave be revoked, be liable for any expense incurred by the state or county in procuring the return of such patient to the hospital.

The superintendent of the Montana state hospital shall have the power and it shall be his duty to place on convalescent leave any patient under his control when he believes it to be for the best interests of such patient and society to do so. If any patient so placed on convalescent leave shall not be returned to said institution within a period of two (2) years thereafter, he shall be deemed discharged therefrom and entry shall be made accordingly in the records of the institution; and if any patient who has escaped from said institution shall not be returned thereto within two (2) years thereafter, he shall be deemed discharged therefrom and an entry made accordingly in the records of said institution. Whenever a patient shall be discharged whether by convalescent leave continuing for a period of two (2) years or by having escaped and not having been returned within two (2) years, the superintendent of the Montana state hospital shall immediately notify in writing the judge of the court by which said patient was committed and no person so discharged shall be recommitted to the state hospital except by court order and upon proceedings as required by law for commitment in the first instance. Provided, however, that nothing herein contained shall be construed as a restoration of civil rights of persons so discharged or as a restoration to sanity, or to relieve the superintendent of the Montana state hospital from the obligation of supervising patients on convalescent leave to the extent of available facilities and finances.

History: En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957.

Amendment

The 1957 amendment throughout this section substituted the words "on convalescent leave" and "placed on convalescent leave" for the words "parole" and "paroled"; in the first sentence substituted the word "placing" for the word "paroling," and inserted the words "on convalescent leave" between the words "patient" and "as"; in the second sentence substituted the word "under" for the word "to" and in the third and fourth sentences substituted the word "under" for the word "in."

38-507. Clothing for patient on convalescent leave or discharged patient. No patient or inmate shall be discharged or placed on convalescent leave from the Montana state hospital without suitable clothing adapted to the season in which he is discharged.

History: En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957.

Amendment

The 1957 amendment substituted the words "placed on convalescent leave" for the word "paroled."

CHAPTER 7—STATE HOSPITAL FOR INEBRIATES

Section 38-707. Charges for maintenance and treatment of patient.
38-708. Financial condition of patient—liability of relatives.

38-707. (1451) Charges for maintenance and treatment of patient. The cost for care and maintenance of all persons committed to the Montana state hospital for inebriates shall not exceed the following amounts: Three dollars ($3.00) per day for the first ninety (90) days from and after the date of the first admission, and thereafter not to exceed the sum of two dollars ($2.00) per day. Should the person admitted, or the persons legally liable for his support, be found to be financially unable to pay for the cost of care and maintenance the same shall be a proper charge against the county from which the patient is admitted.

History: En. Sec. 8, Ch. 139, L. 1911; re-en. Sec. 1451, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

38-708. (1452) Financial condition of patient—liability of relatives. (1) Whenever an examination or hearing for committal to the state hospital for inebriates is had and the person is adjudged and ordered to be confined in the state hospital for inebriates, it shall be the duty of the judge, the clerk of the district court and the county board of public welfare to determine the financial condition of the person admitted and the persons legally liable for his support, and to make an order relative to the payment of the charges for the cost of care and maintenance in accordance with the provisions of section 38-214.

History: En. Sec. 9, Ch. 139, L. 1911; re-en. Sec. 1452, R. C. M. 1921; amd. Sec. 2, Ch. 130, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 3 of Ch. 130, Laws 1955 repealed all acts and parts of acts in conflict therewith.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

Chapter 12. State insurance commission, 40-1201, 40-1204.
13. Insurance companies—license and general regulations, 40-1302.
24. Insurance rate regulation—rating bureaus, 40-2413.

CHAPTER 11—INSURANCE AND SURETY COMPANIES' REGULATION BY COMMISSIONER OF INSURANCE

40-1101. (162) Commissioner of insurance—deputy.

Temporary Provision——Preparation of New Insurance Code (Laws 1957, Ch. 42)

An act relating to the insurance laws of the state of Montana; providing for the preparation of a modern and adequate insurance code; directing the state auditor and ex officio commissioner of insurance to prepare and submit the same to the legislative assembly; making a supplementary appropriation therefor and repealing all acts and parts of acts in conflict therewith.

WHEREAS, the unprecedented development in the economy of this state has been accompanied by a tremendous expansion in the insurance industry both in volume and in kinds and forms of insurance coverage demanded by the insuring public; and

WHEREAS, the statutes of this state relating to the business of insurance and the conduct and supervision thereof, are in many respects outmoded and no longer adequate for the full protection of the public and the efficient and effective regulation of the insurance business and the persons engaged therein; and

WHEREAS, it is manifest, in view of the decision of the Supreme Court of the United States in United States vs. South-Eastern Underwriters Association (322 U.S. 533, 88 L. Ed. 1440, 64 Sup. Ct. 1162), and the provisions of the Act of Congress of March 9, 1945 (59 Stat. 33, 15 U.S.C. 1011-1015), that the existence of adequate state insurance statutes is indispensable for the preservation of the integrity of state jurisdiction over the regulation and taxation of the business of insurance; and

WHEREAS, it is imperative that the insurance laws of this state be studied, revised, supplemented and recodified into an adequate and consistent whole, NOW, THEREFORE,

Section 1. The state auditor and ex officio commissioner of insurance is hereby authorized and directed to prepare and submit to the Legislative Assembly of the state of Montana on or before the tenth day of its regular session of 1959, a bill providing a modern and adequate code of insurance laws of the state of Montana, regulating insurance companies, the insurance business, and the sale and solicitation of insurance.

Section 2. It shall be the duty of the commissioner of insurance to make a comprehensive study of the present statutes of this state relating to insurance and to conduct a detailed survey of experience thereunder, with a view to determining the respects in which, and the extent to which, such present statutes are inadequate for the protection of the public and the efficient and effective supervision of the business of insurance and the persons engaged therein. The commissioner shall have the power to prepare and cause to be distributed among members of the general public and affected segments of the insurance industry, proposed or tentative drafts of said code, and to hold public hearings thereon at such times and places as he may deem expedient and advisable to afford the general public and such affected segments of the insurance industry, an opportunity to present recommendations and generally to be heard. The commissioner is hereby authorized to employ such professional, technical, clerical, stenographic and other services, and to purchase such supplies and materials and to hire such facilities as he may deem necessary or expedient for the accomplishment of the purposes of this act; provided that the aggregate of all expenses incurred for such purposes shall not exceed the amount of the appropriation hereinafter provided.

Section 3. There is hereby appropriated out of any moneys in the general fund of the state, not otherwise appropriated, the sum of twenty-five thousand dollars ($25,000.00) for the biennium beginning July 1, 1957, and ending June 30, 1959, to be used exclusively for the purposes of this act. This appropriation shall be deemed a supplementary appropriation within the meaning of the budget act, and shall be valid upon the final passage and approval of this act, any provisions of the budget act or other restrictions to the contrary notwithstanding.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

CHAPTER 12—STATE INSURANCE COMMISSION

Section 40-1201. State insurance commission—duties.
40-1204. Agreement by insurer waiving right to raise defense of sovereign immunity.

40-1201. State insurance commission—duties. There is hereby created a commission to be known as "the state insurance commission," which said commission shall be composed of the state auditor ex-officio commissioner of insurance, acting as chairman of said commission, state controller and the state treasurer, all of whom shall perform the duties of the said commission without additional compensation or remuneration; provided, that if the state controller's office should be abolished or his functions transferred to another office or officer, the successor to the duties and responsibilities of the state controller shall forthwith succeed to membership on said state insurance commission. The said commission shall convene at such time and place as may be designated in a notice of meeting served upon the members thereof by the chairman of said commission, which said notice shall be served not less than twenty-four (24) hours before the date of said meeting. Two (2) members of said commission shall constitute a quorum, and a majority vote of all members present shall authenticate any action taken by said commission.

History: En. Sec. 1, Ch. 103, L. 1939; amd. Sec. 1, Ch. 179, L. 1955.

Amendment

The 1955 amendment substituted "controller" for "accountant" and "state treasurer" for "chairman of the state board of equalization" and added the proviso clause in the first sentence.

Repealing Clause

Section 2 of Ch. 179, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 179, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

40-1204. Agreement by insurer waiving right to raise defense of sovereign immunity. All contracts or policies of casualty insurance covering state-owned properties or state risks must contain therein as a part thereof, an agreement on the part of the insurer waiving all right to raise the defense of sovereign immunity and no money shall be paid out of the state treasury to any person, firm or corporation, as a consideration or premium on any policy or contract of casualty insurance unless said policy or contract of casualty insurance contains said agreement.

History: En. Sec. 1, Ch. 74, L. 1955.

Title of Act

An act providing that all contracts or policies of casualty insurance covering state-owned properties or state risks must contain therein an agreement on the part of the insurer waiving all right to raise the defense of sovereign immunity.

Repealing Clause

Section 2 of Ch. 74, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—INSURANCE COMPANIES—LICENSE AND GENERAL REGULATIONS

Section 40-1302. License fee.

40-1302. (6112) **License fee.** All insurance corporations, associations, and societies, as hereinbefore specified in the preceding section, before commencing to do business in the state of Montana, shall be required

to secure a license, authorizing them to transact business of insurance corporations, associations, or societies, and shall annually pay to the state auditor, for such license, the following fees:

For a license to collect in any one year premiums amounting to five thousand dollars or less, one hundred and twenty-five dollars.

For a license to collect in any one year premiums over the sum of five thousand dollars, the sum of twenty dollars for each and every one thousand dollars to be so collected; provided that for each of the calendar years of 1957 and 1958 the license fee shall be the sum of twenty-two dollars and fifty cents for each and every one thousand dollars to be collected; provided, further that, where any insurance corporation, association, or society has fifty per cent of its capital stock invested in Montana securities, such insurance corporation, association, or society shall be allowed to deduct whatever tax it may have already paid from the amount due for such license fee or tax, as herein provided.

With respect to authorized insurers, the annual premium tax provided by this section shall when paid be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees and excises of whatever kind or character, excepting only the fees prescribed by this title, taxes on real and tangible personal property located in this state and taxes payable under section 82-1231, Revised Codes of Montana, 1947, and demands for state, county, city, district, municipal, and school taxes, licenses, fees and excises made because of operations prior to January 1, 1957.

History: En. Sec. 2, p. 77, L. 1897; re-en. Sec. 4017, Rev. C. 1907; amd. Sec. 1, Ch. 63, L. 1915; re-en. Sec. 6112, R. C. M. 1921; amd. Sec. 1, Ch. 224, L. 1957.

Amendment

The 1957 amendment inserted the word "annually" near the end of the first paragraph; in the third paragraph added the first proviso clause, inserted the word "further" to the second proviso clause and added all of the last paragraph.

Repealing Clause

Section 2 of Ch. 224, Laws 1957 read "That all acts or parts of acts in conflict herewith except other sections of Title 40, Revised Codes of Montana, 1947, be, and the same hereby are, repealed."

Effective Date

Section 3 of Ch. 224, Laws 1957 read "The provisions of this act shall apply to taxable years beginning after December 31, 1956."

CHAPTER 24—INSURANCE RATE REGULATION—RATING BUREAUS

Section 40-2413. Prohibiting regulation of dividends—regulating deviations.

40-2413. Prohibiting regulation of dividends—regulating deviations. Nothing in this act shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(a) In connection with regulating deviations, every member of or subscriber to a rating organization shall adhere to the filings made on its behalf of such organization except that:

1. In the case of casualty insurance to which this act applies any such insurer may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or

for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (1) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or (2) or for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the date upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization; and

2. In the case of fire, marine, and inland marine insurance to which this act applies any insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance or combination thereof. Such application shall specify the basis for the deviation and a copy thereof shall be sent simultaneously to such rating organization.

(b) The commissioner shall set a time and place for a hearing on such application at which the insurer and such rating organization may be heard and shall give them not less than ten (10) days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation in the case of fire, marine and inland marine insurance, the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 40-2406 of this chapter. The commissioner shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of such permission unless, terminated sooner with the approval of the commissioner.

History: En. Sec. 13, Ch. 255, L. 1947; amd. Sec. 1, Ch. 108, L. 1955.

Amendment

The 1955 amendment substituted the present subd. (a) (2) for one which read: "2. In the case of fire, marine, and inland marine insurance to which this act applies any insurer may deviate from the bureau rate by notifying the commissioner in writing ten (10) days before the deviation is to become effective. Should the commissioner find such rate unfair, discriminatory, or of such a nature as to affect the solvency of the insurer, he shall order a hearing. The commissioner shall set a time and place for a hearing at which all interested parties may be heard and shall give the insurer not less than ten (10) days' written notice thereof. The commissioner after the hearing shall make an order either approving or disapproving the rate and any interested party may appeal from the ruling of the commissioner to the court as in this act provided and during the pendency of the appeal the commissioner's order shall be held in abeyance. If any insurer grants a lower rate on any class of property than that fixed by the bureau of which it is a member or subscriber, this rate shall not be increased by the insurer until one (1) year has elapsed without first securing the approval of the commissioner. A declaration filed with the commissioner of insurance by any insurer of its intention to write insurance at a uniform variation of a certain per cent from the bureau rate shall be sufficient compliance with this act" and in subd. (b) inserted the words "on such application" between the words "hearing" and "at" and added the third and last sentences.

Repealing Clause

Section 2 of Ch. 108, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 108, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

TITLE 41—LABOR

Chapter 1. Obligations of employers, 41-117.
7. Preference of Montana labor in public works contracts, 41-701.
10. Protection of street car employees, Repealed—Section 1, Chapter 12, Laws of 1957.
11. Hours of labor in various employments, 41-1121.
12. Apprenticeship council and contracts, 41-1201, 41-1202.
16. Department of labor and industry, 41-1603.

CHAPTER 1—OBLIGATIONS OF EMPLOYERS

Section 41-117. Itemized statement of deductions from salary or wage—employer to furnish.

41-117. Itemized statement of deductions from salary or wage—employer to furnish. All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security or any other deductions together with the amount of each deduction.

Where no deduction is made in such payment of wages or salaries the employer shall give to the employee a statement that the payment does not include any such deductions.

History: En. Sec. 1, Ch. 159, L. 1957.

Title of Act

An act to provide for the employer to give to the employee an itemized statement including the amounts of any deductions made by the employer for state and federal income taxes, social security or any other deductions; providing further that if no deductions are withheld by the employer that the employer give to the employee at the time he makes payment for salaries or wages a statement stating that no deductions have been made; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 159, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS

Section 41-701. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.

41-701. (3043.1) **Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.** In all contracts hereafter let for state, county, municipal and school construction, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages in effect as paid in the county in which the work is being performed. "Standard prevailing rate of wages," as set forth herein, means those wages which are paid in the county by other contractors for the same type of work performed in such county under this act. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provi-

sions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

History: En. Sec. 1, Ch. 102, L. 1931; amd. Sec. 1, Ch. 32, L. 1955.

Amendment

The 1955 amendment in the first sentence deleted the words "seat of the county" which appeared after the words "paid in the county"; substituted a period for the word "and" which appeared after the word "performed" and added a new sentence beginning with the words "'Standard prevailing rate of wages,' * * *."

Repealing Clause

Section 2 of Ch. 32, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 32, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

CHAPTER 10—PROTECTION OF STREET CAR EMPLOYEES

(Repealed—Section 1, Chapter 12, Laws of 1957)

41-1001 to 41-1007. (3061 to 3067) **Repealed.**

Repeal

These sections (Secs. 1, 3, 4, Ch. 78, L. 1907; amd. Secs. 1, 2, Ch. 44, L. 1913; amd. Secs. 1, 2, Ch. 80, L. 1913; amd. Sec. 1, Ch. 51, L. 1921), relating to protection of street car employees, were repealed by Sec. 1, Ch. 12, Laws 1957.

CHAPTER 11—HOURS OF LABOR IN VARIOUS EMPLOYMENTS

Section 41-1121. Hours of labor for state and municipal governments, mines, mills, smelters.

41-1121. (3079) **Hours of labor for state and municipal governments, mines, mills, smelters.** A period of eight hours shall constitute a day's work in all works and undertakings carried on or aided by any municipal, county, or state government, first class school districts, and on all contracts let by them, and for all janitors, except in court houses of sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county, or state governments, school districts of first class, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing and treatment of coal; except in cases of emergency when life or property are in imminent danger. Provided, that for fire-fighters in cities of the first and second class, a work week shall be a period of a maximum of forty hours during a five day week.

History: En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R. C. M. 1921; amd. Sec. 2, Ch. 116, L. 1929; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957. Cal. Pol. C. Secs. 3244, 3245.

Amendment

The 1957 amendment added the proviso clause.

Repealing Clause

Section 2 of Ch. 244, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

Section 41-1201. Apprenticeship council.
41-1202. Duties of state apprenticeship council.

41-1201. Apprenticeship council. (a) The commissioner of labor and industry shall appoint an apprenticeship council, composed of three (3) representatives each from employer and employee organizations respectively. The terms of office of the members of the apprenticeship council first appointed by the commissioner of labor and industry shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years, and three (3) years respectively. On and after July 1, 1957, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex-officio members of said council without vote.

(b) Subject to the approval of the federal committee on apprenticeship, the apprenticeship council shall: (1) establish standards for apprenticeship agreements in conformity with the provisions of this act; (2) issue such rules and regulations as may be necessary to carry out the intent and purposes of this act; and (3) perform such other duties as are hereinafter imposed. Not less than once every two years the apprenticeship council shall make a report through the governor of the state of Montana of its activities and findings to the legislature which shall be made available to the public.

(c) The council may accept from the federal government or any agency thereof or from any state agency, any funds made available to carry out purposes within the scope of the activities and purposes of the apprenticeship council and to use such funds as said council may direct, for the purposes for which said funds are made available.

(d) A per diem of fifteen dollars ($15.00) plus actual and necessary expenses for meals and lodging, such expenses not to exceed that paid other state officials or employees, shall be paid each voting member of the state apprenticeship council, or their authorized representatives, while in official travel status and while attending official meetings for each whole or part of any calendar day. Such voting members, or their representatives, shall be reimbursed a mileage rate and the same is paid other state officials or state employees, for use of personally-owned vehicles to attend official meetings from any point in the state of Montana to the place of meeting in Montana and return. A maximum of three hundred dollars ($300.00) shall be the limitation for the combined per diem, expenses and mileage payments as provided for herein, for each voting member of said council, or their representatives, during the twelve (12) consecutive month period of any fiscal year from July first of one year to June thirtieth of the next following year.

History: En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957.

Amendment

The 1957 amendment in subd. (a) substituted the words "On and after July 1, 1957" for the word "Thereafter" which appear at the beginning of the third sentence; inserted the words "by the governor of the state of Montana" in the third and fourth sentences; in subd. (b) in the last sentence substituted "every two years" for "a year" and "governor of the state of Montana" for "commissioner of labor and industry" and added subd. (d).

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education. The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957.

Amendment

The 1957 amendment substituted the words "voting members of the apprenticeship council are" for the words "commissioner of labor and industry is" in the last sentence of this section.

Repealing Clause

Section 4 of Ch. 183, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 183, Laws 1957 provided the act should be in full force and effect on July 1, 1957.

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

Section 41-1603. Commissioner of labor and industry—term—salary—oath—bond.

41-1603. Commissioner of labor and industry—term—salary—oath—bond. The term of office of the commissioner of labor and industry appointed at this time shall terminate on March 4, 1953; and, the term of office of the commissioner of labor and industry appointed thereafter shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary of six thousand dollars ($6,000.00) payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by section 1, Article XIX of the Montana Constitution and execute an official bond in the amount of one thousand dollars ($1,000.00).

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957.

Amendment

The 1957 amendment raised the salary of the commissioner of labor and industry from $5,000 to $6,000.

Effective Date

Section 2 of Ch. 27, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 21, 1957.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

Chapter 3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310, 43-311.
7. Legislative council, 43-709 to 43-715.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem and mileage of members.
43-311. Per diem and mileage of president of senate and speaker of house.

43-310. (74) **Per diem and mileage of members.** Members of the legislative assembly hereafter elected shall receive twenty dollars ($20.00) per day, payable weekly, during the session of the legislative assembly, and seven cents (7c) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955. Cal. Pol. C. Sec. 266.

Amendment

The 1955 amendment raised the per diem from $10 to $20 per day and the mileage from 6¢ to 7¢ per mile.

43-311. (75) **Per diem and mileage of president of senate and speaker of house.** The president of the senate, and the speaker of the house, shall receive the sum of twenty-five dollars ($25.00) per day during the session of the legislative assembly, and the same mileage as members.

History: En. Sec. 221, Pol. C. 1895; re-en. Sec. 78, Rev. C. 1907; amd. Sec. 2, Ch. 45, L. 1909; re-en. Sec. 75, R. C. M. 1921; amd. Sec. 2, Ch. 23, L. 1955. Cal. Pol. C. Sec. 267.

Amendment

The 1955 amendment deleted the words "after the first Monday in January, 1913," which appeared after the words "The president of the senate," and raised the per diem from $12 to $25 per day.

Repealing Clause

Section 3 of Ch. 23, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—STATUTES—THEIR ENACTMENT AND OPERATION—GOVERNOR'S APPROVAL OR VETO

43-507. (90) **Statutes, when effective.**

References

Cited or applied in State v. Winter, — M —, 285 P 2d 149, 155.

43-514. (97) **Repeal of laws creating criminal offenses, when bar, etc.**

References

Cited or applied in State v. Winter, — M —, 285 P 2d 149, 156.

CHAPTER 7—LEGISLATIVE COUNCIL

Section 43-709. Legislative council—members—term—vacancies.
43-710. Powers and duties.
43-711. Executive director—personnel—special committees.
43-712. Power to investigate and examine.
43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings.
43-714. Expenses.
43-715. Organization—officers—rules of procedure and records.

43-709. Legislative council — members — term — vacancies. There is hereby created a legislative council which shall consist of six (6) members of the house of representatives who shall be appointed by the speaker of the house of representatives, no more than three (3) of whom shall be of the same political party, and six (6) members of the state senate who shall be appointed by the committee on committees of the state senate, no more than three (3) of whom shall be of the same political party. The first members of the legislative council shall be appointed not later than the sixtieth legislative day of this session. New members of the council shall be appointed not later than the sixtieth legislative day of each succeeding session. Membership on said council shall terminate with the termination of each member's term of office, or on December 31 of the year following the year in which the appointment was made, whichever event first occurs. Any vacancy on said legislative council occurring when the legislature is not in session may be filled by the selection of another member of the legislature, by the remaining members of the council.

History: En. Sec. 1, Ch. 34, L. 1957.

Title of Act

An act relating to the creation of a legislative council consisting of six members of the house of representatives appointed by the speaker of the house of representatives and six members of the senate appointed by the committee on committees of the state senate; providing that no more than three members appointed from each house shall be of the same political party; providing when the first members of said council shall be appointed; providing for terms of office and filling vacancies on said council; prescribing the powers and duties of said council; providing for the employment of an executive director and necessary personnel including the services of research agencies; providing for appointment of special committees and prescribing their composition and functions; providing that the members of said council and committees shall serve without compensation except for actual travel and other incidental expenses incurred in the discharge of their duties; providing for the election of a chairman of the council and its organization by the members thereof; providing for appropriation of funds for the purpose of carrying out the provisions of this act; containing a constitutional and validity clause and containing an effective date.

43-710. Powers and duties. The legislative council shall accumulate, compile, analyze and furnish such information bearing upon any matters relating to existing or prospective legislation as may be determined by it upon its own initiative pertaining to important issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of consolidations of departments, commissions, boards and institutions in state government for the elimination of unnecessary activities and duplications in office personnel and equipment, for the coordination of activities, for the purpose of increasing efficiency of service or effecting economies, and for the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of

taxes, and all other matters pertaining to the function of all departments and branches of state government.

The legislative council shall prepare such bills and resolutions as in its opinion the welfare of the state may require for presentation to the next regular session of the legislative assembly.

History: En. Sec. 2, Ch. 34, L. 1957.

43-711. Executive director—personnel—special committees. The legislative council may employ an executive director and such other personnel, not members of the council, as it deems necessary to assist in the preparation of its recommendations, proposed legislative acts and any other activities and shall fix the compensation of such employees. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

The legislative council may appoint special committees composed of either other members of the legislature or private citizens or both, to study and inquire into any specific governmental problem and to make recommendations for the solution of the same. The work of such special committee shall be performed under the general supervision of the legislative council and the personnel, data and facilities of said council shall be made available to such special committees.

History: En. Sec. 3, Ch. 34, L. 1957.

43-712. Power to investigate and examine. The legislative council shall have authority to investigate and examine into the costs of state governmental activities and may examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

History: En. Sec. 4, Ch. 34, L. 1957.

43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings. In the discharge of its duties the legislative council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative council to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 5, Ch. 34, L. 1957.

43-714. Expenses. Members of the legislative council and its committees shall serve without compensation but shall be reimbursed for

actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 6, Ch. 34, L. 1957.

43-715. Organization—officers—rules of procedure and records. The legislative council shall organize within thirty (30) days after the passage and approval of this act by electing one (1) of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council and its committees are directed to keep accurate records of their activities and proceedings.

History: En. Sec. 7, Ch. 34, L. 1957.

Appropriation

Section 8 of Ch. 34, Laws 1957 read "There is hereby appropriated the sum of one hundred thousand dollars ($100,000.00) for the purpose of carrying out the provisions of this act."

Separability Clause

Section 9 of Ch. 34, read "If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Effective Date

Section 10 of Ch. 34, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 21, 1957.

Previous Legislation

Two previous pieces of legislation creating legislative councils in 1953 and 1955 held invalid. State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611; State ex rel. Schara v. Holmes, — M —, 295 P 2d 1045.

TITLE 44—LIBRARIES

Chapter 4. State law library, 44-409.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

44-126. (1569) **Repealed.**

Repeal

This section (Sec. 2, Ch. 77, L. 1921; amd. Sec. 1, Ch. 50, L. 1929; amd. Sec. 5, Ch. 38, L. 1939; amd. Sec. 3, Ch. 128, L. 1949), relating to the employment and salary of an assistant law librarian, was repealed. The section was repealed in 1949 by Sec. 16, Ch. 134, Laws 1949, effective March 1, 1949, and by Sec. 13, Ch. 153, Laws 1949. The amendment of this section in 1949, Sec. 3 of Ch. 128, Laws 1949 was repealed by Sec. 4, Ch. 205, Laws 1955 effective March 5, 1955.

CHAPTER 4—STATE LAW LIBRARY

Section 44-409. Salary of librarian and assistant librarian.

44-409. Salary of librarian and assistant librarian. The salary of the librarian of the state law library, and of the assistant librarian, shall be fixed in such amount as the board of trustees shall deem reasonable.

History: En. Sec. 9, Ch. 153, L. 1949; amd. Sec. 2, Ch. 205, L. 1955.

Compiler's Note

Section 1 of Ch. 205, Laws 1955 amended section 82-1801.

Amendment

The 1955 amendment deleted a proviso from this section which read "provided, however, that the salary of the librarian shall not exceed thirty-six hundred dollars ($3,600.00) per annum, and the salary of the assistant librarian shall not exceed three thousand dollars ($3,000.00)."

Repealing Clauses

Section 3 of Ch. 205, Laws 1955 read "That section 82-508, as amended by section 2 of chapter 128 of the Laws of 1949, is herewith repealed."

Section 4 of Ch. 205, Laws 1955 read "That section 3 of chapter 128 of the Session Laws of 1949 is hereby repealed."

Section 5 of Ch. 205, Laws 1955 read "That section 4 of chapter 128 of the Session Laws of 1949 is hereby repealed."

Section 6 of Ch. 205, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 205, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

TITLE 45—LIENS

Chapter 10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1001 to 45-1012.
14. Crop or grain lien for dusting or spraying, 45-1402.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1001. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines.
45-1002. Lien for labor or supplies furnished for contractor.
45-1003. Manner of enforcing liens—duty of county clerks.
45-1004. How lien perfected.
45-1005. Date lien arises—preference over other liens—parity of liens.
45-1006. Priority of lien over mortgage or other liens.
45-1007. Lien for running account as single contract.
45-1008. Right of subcontractor against contract price—notice.
45-1009. Removal prohibited—injunction—lien follows property wrongfully removed.
45-1010. Notice to purchaser of oil and gas.
45-1011. "Owner" defined—leasehold interest—how affected.
45-1012. "Material" and "furnish" defined.

45-1001. (8375) **Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines.** Any person, corporation, or co-partnership who shall under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes, or the owner of any gas pipe or oil pipeline, or with the trustee or agent of such owner, perform labor or furnish material, or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, or oil or gas pipeline, or who shall furnish any material or services, or perform any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing or repairing any oil or gas well or oil or gas pipeline, whether or not such material is incorporated therein or becomes a part thereof, shall have a lien for the amount due therefor, including transportation and mileage charges connected therewith and interest from the date the same was due, upon the whole of such leasehold or oil or gas pipeline, the appurtenances thereon, and upon all material owned by the owner of such leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating or repairing of any such oil or gas well or oil or gas pipeline, and upon all oil or gas wells located on such leasehold, and upon all oil or gas produced from such leasehold and the proceeds thereof inuring to the working interest therein as such working interest existed on the date the labor was first performed or materials or services were first furnished. Provided, however, that in the event labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted herein shall be restricted to such portion of the acreage. Provided further, that the lien herein granted shall not extend to any royalty interests, overriding royalty interests or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed.

History: En. Sec. 1, Ch. 45, L. 1917; re-en. Sec. 8375, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1923; amd. Sec. 1, Ch. 143, L. 1957.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

45-1002. (8376) **Lien for labor or supplies furnished for contractor.** Any person, co-partnership, or corporation who shall furnish such materials or services as a subcontractor or to a contractor or a subcontractor, or any person who shall perform such labor under a subcontractor with a contractor, or who, as an artisan or day laborer in the employ of such contractor or subcontractor shall perform any such labor, shall have a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to or for whom the labor is performed, or material or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline.

History: En. Sec. 2, Ch. 45, L. 1917; re-en. Sec. 8376, R. C. M. 1921; amd. Sec. 2, Ch. 143, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

45-1003. (8377) **Manner of enforcing liens—duty of county clerks.** The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

45-1004. How lien perfected. Every person, corporation or co-partnership claiming a lien under this chapter shall file with the county clerk of the county in which such land, leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under section 45-1002, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under contract as aforementioned.

History: En. 45-1004 by Sec. 4, Ch. 143, L. 1957.

45-1005. Date lien arises—preference over other liens—parity of liens. The lien provided for in this chapter arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 45-1004, such lien shall be preferred to all other titles, charges, liens or encumbrances

which may attach to or upon any of the property upon which a lien is given by this chapter subsequent to the date the lien herein provided for arises. All liens affixed by virtue of this chapter upon the same property shall be of equal standing.

History: En. 45-1005 by Sec. 5, Ch. 143, L. 1957.

45-1006. Priority of lien over mortgage or other liens. The lien herein provided for shall have no priority over other liens, encumbrances or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: En. 45-1006 by Sec. 6, Ch. 143, L. 1957.

45-1007. Lien for running account as single contract. All labor performed or materials or services furnished by any person entitled to a lien under this chapter upon the same leasehold for oil and gas purposes or the same pipeline shall for the purposes of this chapter be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than six (6) months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

History: En. 45-1007 by Sec. 7, Ch. 143, L. 1957.

45-1008. Right of subcontractor against contract price — notice. Nothing in this chapter shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated by such owner to be paid for such materials or services furnished or labor performed; provided, however, that the risk of all payments made to the original contractor shall be upon such owner if such payments be made after written notice from a person other than an original contractor is received by such owner at his residence or principal place of business which notice shall set forth the name and address of the claimant and the amount and nature of his claim. Payment by the owner to the original contractor of all or any part of the contract price, prior to the receipt of such notice, shall operate to discharge and satisfy all liens attaching to the property of such owner by virtue of this chapter to the extent of such payment. The owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

History: En. 45-1008 by Sec. 8, Ch. 143, L. 1957.

45-1009. Removal prohibited — injunction — lien follows property wrongfully removed. When any lien provided for by this chapter shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property, or any part thereof, or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written

consent of the holder of such lien. In the event such property, or some part thereof, is about to be removed or disposed of in violation of this section, the district court for the county where such property, or any part thereof, is located, may, upon the verified application of the holder of such lien, enjoin all persons alleged in such application to be about to remove or dispose of such property, or some part thereof, from removing or disposing of the same. In the event such property, or any part thereof, shall have been removed or disposed of in violation of this section, the holder of such lien shall be entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state; provided, however, that this section shall not preclude the appointment of receiver in actions brought to foreclose liens given by this chapter upon any equitable grounds warranting such appointment.

History: En. 45-1009 by Sec. 9, Ch. 143, L. 1957.

45-1010. Notice to purchaser of oil and gas. Anything in this chapter to the contrary notwithstanding, any lien claimed by virtue of this chapter insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas, until written notice of such claim has been delivered to such purchaser at his residence or principal place of business. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered letter deposited in the United States mails. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

History: En. 45-1010 by Sec. 10, Ch. 143, L. 1957.

45-1011. "Owner" defined—leasehold interest—how affected. As used in this chapter, the word "owner" includes a person holding any interest in the legal or equitable title, or both, and purchasers under executory contract. If a lien provided for in this chapter attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this chapter attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled, shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien attached prior to such failure.

History: En. 45-1011 by Sec. 11, Ch. 143, L. 1957.

45-1012. "Material" and "furnish" defined. As used in this chapter, the word "material" means material, fuel, machinery, equipment, appliances, buildings, structures, tools, bits or supplies but does not include drilling rigs or hoists or their integral component parts except wire lines, and the word "furnish" means sell or rent.

History: En. 45-1012 by Sec. 12, Ch. 143, L. 1957.

Repealing Clause

Section 13 of Ch. 143, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1402. Claim of lien—when, where and how filed.

45-1402. Claim of lien—when, where and how filed. Any person, firm, corporation or copartnership who is entitled to a lien under this act shall, within sixty (60) days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops file in the office of the county clerk and recorder of the county in which said grains or crops were grown, a just and true account of the amount due for such services, labor or material after allowing all proper credits and offsets and containing a description of the grain or crops to be charged with such lien, the price agreed upon for such labor or service or material, or if no price was agreed upon the reasonable value of the same, together with the name of the person, firm or corporation for whom such labor or services were performed or material furnished, and a description of the lands as nearly as possible, upon which said grains or crops were raised, which statements of fact shall be verified by affidavit of the person, firm, corporation or copartnership claiming such lien, or his, their or its duly authorized agent or attorney, having knowledge of the facts.

History: En. Sec. 2, Ch. 205, L. 1953; amd. Sec. 1, Ch. 65, L. 1955.

Amendment

The 1955 amendment substituted "sixty (60)" for "ten (10)."

Effective Date

Section 2 of Ch. 65, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 26, 1955.

TITLE 46—LIVESTOCK

Chapter 8. Inspection of livestock before removal from county, 46-801, 46-802, 46-804, 46-806.
10. Estrays—disposal of, 46-1008.
17. Animals running at large, 46-1717.
21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
23. Grass conservation—grazing districts, 46-2303, 46-2305, 46-2320, 46-2326.
27. County livestock protective committees, 46-2704.

CHAPTER 6—BRANDS—RECORDING—VENTING—LIVESTOCK MORTGAGES

46-605. (3303) Designation of years for re-recording brands.

Operation and Effect

Where the holder of a registered brand died and thereafter the brand expired without being re-registered, the brand was then open to record by anyone; hence, mandamus brought by the administrator of the deceased person at a later date would not lie to require the recorder of marks and brands to record the brand in the administrator's name as there is no clear legal duty upon the recorder to do what the administrator required by his complaint. Benolken v. Miracle, — M —, 289 P 2d 953, 954.

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM COUNTY

Section 46-801. Inspection of livestock before removal from county.
46-802. Duties of state stock inspectors and deputy state stock inspectors.
46-804. Fees for inspection and livestock transportation permit.
46-806. Penalties for violations of act.

46-801. Inspection of livestock before removal from county.

(1) to (5). * * * [Subdivisions (1) to (5), same as parent volume.]

(6) The provisions of section 1 of this act (this section) shall not apply.

(a) to (d). * * * [Subsections (a) to (d), same as parent volume.]

(e) to any animal or animals when driven on the hoof from one (1) county to an adjoining county within the state for the purpose of shipment by railroad or delivery to a licensed public market by any person who has been the owner of said animal or animals for a period of at least three (3) months;

(f). * * * [Same as parent volume.]

(g) to any such animal or animals when hauled by truck or trailer from one county to an adjoining county within the state for the purpose of shipment by railroad at which shipping point the livestock commission of the state of Montana maintains a stock inspector or where a deputy state stock inspector is available, and for which a transportation permit has been obtained in the manner provided by law.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110; L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957.

Amendment

The 1957 amendment in subd. (6) (e) deleted the word "such" which appeared between the words "any" and "animal" and added subsec. (g) to subd. (6).

46-802. Duties of state stock inspectors and deputy state stock inspectors. It shall be the duty of state stock inspectors and deputy state

stock inspectors, upon the application of the owner of any such animal referred to in section 46-801, or the duly authorized agent of such owner, to inspect all such animals intended for removal or shipment as in this act provided, and to issue his certificate of inspection therefor, if it shall appear with reasonable certainty that the applicant is the owner of such animal or has the lawful right to the possession thereof.

The inspection herein provided for shall include such examination of the animal and all marks and brands thereon as to identify the same. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or of the applicant for inspection, the class of the animal as specified in section 46-801, the marks and brands, if any, upon the animal, and such other information and upon such form of certificate as the livestock commission may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy thereof shall be furnished by the inspector to the owner or shipper of the animal, and one (1) shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana, within five (5) days.

If it shall appear with reasonable certainty that the applicant is the owner of such animals or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of any such animal or animals to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a railroad shipping point in an adjoining county, shall issue to such person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign such permit certifying the brands, description and destination of such animals. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, a description of the vehicle or vehicles to be used to transport such animal or animals to include the license number of such vehicle or vehicles and such other information and upon such form of permit as the livestock commission may from time to time require. Any such permit so issued shall be good for shipment within 36 hours from date and time of issue; provided, however, that permits not used within this time limitation must be returned to the issuing officer to be canceled and to release permittee from performance. One copy of such permit shall be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the secretary of the livestock commission at Helena, Montana within five (5) days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the animal or animals which such copy of the permit shall accompany the shipment and be delivered to the state stock inspector at

the livestock market or shipping point where the animal or animals are delivered.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957.

Amendment

The 1957 amendment in the first sentence of the third paragraph inserted the words "or any sheriff or deputy sheriff" "or delivered directly to a railroad shipping point in an adjoining county" and "or transportation permit"; in the second sentence inserted the words "or transportation permit" and in the fourth sentence inserted the words "or sheriff's office" each time they appear and inserted the words "or shipping point."

46-804. Fees for inspection and livestock transportation permit. (a) For the service of inspection herein provided for before removal from county, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars ($3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar ($1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state

of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957.

Amendment

The 1957 amendment made numerous changes in subd. (a) of this section. For subdivision prior to amendment see parent volume.

46-806. Penalties for violations of act. (a) Any person who removes or causes to be removed from any county in the state any animal or animals of the class referred to in section 46-801; (1) without having the same inspected prior to removal where such inspection is required by law; (2) without obtaining a market consignment permit or transportation permit, where such permits are obtainable by law; (3) and does obtain a market consignment permit for such animal or animals but does not deliver such animal or animals transported thereunder to the livestock market designated in the market consignment permit; (4) and does obtain a transportation permit for such animal or animals but does not deliver such animal or animals transported thereunder to the destination as shown on the transportation permit and fails to have such livestock so transported inspected at point of destination or does not file a loading tally with the carrier as provided in section 46-1008; shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(b) to (f). * * * [Subdivisions (b) to (f), same as parent volume.]

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957.

Amendment

The 1957 amendment in subd. (a) substituted "(2) without obtaining a market consignment permit or transportation permit, where such permits are obtainable by law" for "(2) without obtaining a market consignment permit for such animal or animals, where such market consignment permit is obtainable by law" and added all of (4).

Repealing Clause

Section 5 of Ch. 142, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1008. Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection.

46-1008. (3341) **Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection.** Every person, agent, firm, corporation, pool or roundup association, who shall ship cattle by railroad to any market where Montana livestock inspectors are maintained, may ship with their own cattle any estrays which may be among them, but they must before shipment, or at the time of loading same on the cars for shipment, carefully and as accurately as possible inspect or tally the brand

on such cattle, whether their own or estrays, making a list in duplicate, which list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing such brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment except that in the case of cattle not owned by the shipper and which are marked with a recorded brand, or where the owner is known to be someone other than the shipper, the shipper must obtain the written consent of such owner or owners, or the written consent of a state stock inspector or a deputy state stock inspector before shipment of such cattle. It shall be the duty of the railroad agent at the point of loading to require from the shipper lists as described in this act, and to forward, within twenty-four (24) hours after loading, one copy to the livestock commission at Helena, Montana, and another copy to the Montana brand inspector at the point of destination. However, in any county or counties where there has been established an association of livestock people, the livestock commission on the receipt of a petition from an association shall require that all cattle shipped by rail from the respective county or counties be inspected before loading by a state stock inspector or deputy state stock inspector. The petition must be signed by at least fifty-one per cent (51%) of the owners of cattle in the county, and such petitioners owning at least fifty-five per cent (55%) of the cattle as shown by the most recent completed assessment records of the county assessor.

History: En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907; re-en. Sec. 3341, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1923; amd. Sec. 1, Ch. 137, L. 1943; amd. Sec. 1, Ch. 99, L. 1957.

Amendment

The 1957 amendment added the last two sentences.

Repealing Clause

Section 2 of Ch. 99, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 17—ANIMALS RUNNING AT LARGE

Section 46-1717. Female breeding cattle, purebred bull to accompany.

46-1717. (3404) **Female breeding cattle, purebred bull to accompany.** Any person or persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon said range or national forest reserve one purebred graded bull of a recognized beef type, not less than fifteen (15) months nor more than eight (8) years of age, for every thirty (30) head of female breeding cattle, pastured upon such range or national forest reserve; provided, however, that any two (2) or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two (2) or more users thereof does not exceed thirty (30) head.

A purebred bull as contemplated by this act must be a bull having a registration certificate from the breeding association of its particular

breed. A graded bull as defined in this act, shall be one selected by a committee of permittees.

History: En. Sec. 2, Ch. 42, L. 1919; re-en. Sec. 3404, R. C. M. 1921; amd. Sec. 1, Ch. 40, L. 1957.

Amendment

The 1957 amendment inserted the word "graded" between the words "purebred" and "bull" in the first paragraph and added the second paragraph.

Repealing Clause

Section 2 of Ch. 40, Laws 1957 repealed all acts and parts of acts in conflict therewith

Effective Date

Section 3 of Ch. 40, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 21, 1957.

46-1719. (3406) **Taking up and castrating bulls, notice to owner.**

Inquiry as to Ownership

Where defendant found a purebred dairy bull running at large upon his pasture it would not have been either unnatural or unreasonable for the defendant to have contacted his neighbor, the plaintiff, to ascertain what, if anything, either knew about the bull. By failing to do this the defendant was liable to the plaintiff, the owner of the bull, for castrating it. Holden v. Varner, 128 M 211, 272 P 2d 1008, 1010.

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license fee on sheep. To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding ten cents (10¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, co-partnerships, corporations, trusts and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume,

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51%) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of ten cents (10¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least fifty-one per cent (51%) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least fifty-one per cent (51%) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of ten cents (10¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing

Section 3 of Ch. 87, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 87, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 4, 1957.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

Section 46-2303. Montana grass conservation commission—membership and terms.
46-2305. Secretary—compensation.
46-2320. Distribution of grazing preferences.
46-2326. Running livestock at large or in herd without permit forbidden—liability of owner—penalty—procedure—release to owner.

46-2303. Montana grass conservation commission—membership and terms. There is hereby created the Montana grass conservation commission of the state of Montana which commission shall be composed of five (5) members with the powers and duties specified in this act. Such members shall be appointed by the governor of the state and approved by the senate for four-year terms or until their successors are appointed and quali-

fied; provided, however, three (3) members of the first five (5) appointed after the passage and approval of this act shall serve for terms as follows: One (1) for a one-year term and one (1) for a two-year term and one (1) for a three-year term; at the expiration of these terms all subsequent appointments except those filling vacancies in unexpired terms, shall be for four (4) years. All regular terms of such members shall begin on April first. The governor, giving full consideration to representation to large and small operators, shall appoint one (1) representative member and livestock operator who is either an officer or a permittee member of an organized state grazing district, from each of the following groups:

(1) One (1) member from the Montana Stockgrowers' Association;
(2) One (1) member from the Montana Woolgrowers' Association;
(3) One (1) member from the County Commissioners' Association;
(4) One (1) member from one (1) of the cooperative state grazing districts, and the fifth member to be a person representing the general public familiar with the livestock industry. If a vacancy occurs on the commission the governor shall, within thirty (30) days, fill such vacancy for the unexpired term from the group from which said vacancy shall occur. Expired terms shall be filled by appointment from the group to which the retiring member belonged.

History: En. Sec. 3, Ch. 208, L. 1939; amd. Sec. 1, Ch. 257, L. 1955.

Amendment

The 1955 amendment in the third sentence substituted the word "on" for the word "upon" and in the fourth sentence substituted "permittee member" for "director."

46-2305. Secretary—compensation. The commission shall select and appoint a secretary at a salary of not to exceed five hundred dollars ($500.00) per month. The secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office. The commission shall fix the salary of the secretary.

History: En. Sec. 5, Ch. 208, L. 1939; amd. Sec. 1, Ch. 13, L. 1949; amd. Sec. 1, Ch. 124, L. 1953; amd. Sec. 2, Ch. 257, L. 1955.

Amendment

The 1955 amendment inserted the words "at a salary of not to exceed five hundred dollars ($500.00) per month" in the first sentence; substituted the word "The" for the words "and said" which begins the second sentence and deleted from the end of the section the words "not to exceed four hundred dollars ($400.00) per month."

46-2320. Distribution of grazing preferences. When a state district is organized, grazing preferences shall be distributed in the following manner: Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference. If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference. If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be

issued to nonmembers or members, preferring those that have used the range for any three (3) or any two (2) consecutive years in the five-year period immediately preceding June 28, 1934; or in the case of districts organized after March 15, 1945, preferring those that have used the range five (5) years immediately preceding the organization of such districts. When such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by such permittee within or near the district for a period of any combination of four (4) years out of five (5), then the forage-producing lands owned or controlled by such permittee may be considered dependent commensurate property, and upon application, the district may accordingly grant such permittee membership and preference in the district providing an application had been made for temporary rights for each of the five (5) years. Provided, however, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference right unless such preference right be expressly granted by the district and in the manner herein provided.

If reduction in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955.

Amendment

The 1955 amendment made the word "districts" singular the last time it appears in the fourth sentence of the first paragraph and the word "reductions" singular in the first sentence of the second paragraph.

46-2326. Running livestock at large or in herd without permit forbidden —liability of owner—penalty—procedure—release to owner. (1) No owner or person in control of livestock shall permit the same to run at large, or under herd, within the exterior boundaries of any state district, unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district; and the owner or person in control of such livestock running at large, or under herd, within a state district, without a permit from the district, or in excess of such permit, shall be liable for all damages sustained thereby by any member, permittee or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district, without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not less than ten dollars ($10.00), nor more than five hundred dollars ($500.00), and in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto; provided that this provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district, if the stock so grazed is restrained from running

at large within such state district and from grazing upon any other lands within the state district.

(2) The state district or its duly authorized agent controlling the land upon which such wrongful entry is made by trespassing livestock, may take into its possession such livestock and shall reasonably care for same while in its possession and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession. The state district taking up such livestock shall, within seventy-two (72) hours after taking possession thereof, notify said owner, owners, or person in charge thereof, by a notice in writing, describing said livestock by number of animals and brands thereon, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the same thereafter, such charges not to exceed fifty cents (50c) per animal unit per day, and describing by general description, the location of the premises upon which said livestock is held, and requiring such owner or owners, within ten (10) days after receiving said notice, to take said livestock away after making full payment of all damages and costs of said livestock.

(3) In case the parties do not agree as to the amount of damages, the state district taking up such livestock, may, at the expense of the owner, retain a sufficient amount of such livestock to cover the amount of damages claimed by the state district. Provided, however, that the owner may, upon furnishing a good and sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by said state district in a civil action to foreclose its lien, have returned to him all livestock held as aforesaid, and said state district shall be liable to such owner for any loss or injury to said livestock accruing through the state district's lack of reasonable care. If the state district taking up livestock shall fail to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the former shall bear the expense of keeping and feeding same while in its possession. Such notice may be given by personal service on the said owner, owners or person in charge thereof, or by leaving said notice at his usual place of residence with some member of his family over the age of fourteen (14) years, or by sending said notice by prepaid registered mail, addressed to his last known place of residence. Said service by registered mail shall be deemed complete upon the deposit of said notice in the post office.

(4) Upon demand, the state district or its authorized agent controlling the land, or party in charge of such livestock, shall release and deliver possession of such livestock to the owner or person entitled thereto, upon payment of damages and charges; but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner or persons in control of such livestock, as hereinbefore provided. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock, may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and

reasonable costs, provided suit to recover same is filed in the district court within sixty (60) days after payment.

(5) If after due diligence to discover the owner or possessor of such livestock, such owner or possessor can not be found, or the ownership of such livestock discovered, the state district taking up such livestock, or said owner or claimant shall refuse to pay the amount of damages or charges, or furnish bonds therefor, as herein provided, the party taking up such livestock shall, within ten (10) days from the time that said livestock was taken up, deliver to the sheriff or a constable of the county in which the livestock was taken up, a statement containing the information required to be given in the notice, hereinbefore set out, and in addition thereto, he shall mail, by prepaid registered mail, a copy of said statement addressed to the nearest state livestock inspector. Upon receipt of such statement, the sheriff or contable shall proceed to advertise and sell, at public auction, the livestock so taken up.

(6) Such livestock shall be sold on five (5) days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three (3) public places in such county, one of which shall be within the district. Provided, however, that such sheriff may require from the state district a good and sufficient bond, conditioned that the state district has used reasonable diligence to discover the owner of such stock and to notify him in the premises and that all requirements of law on the part of the state district to be performed in the premises have been performed and indemnifying the sheriff against all liability for the sale of said livestock except as to his own failure to perform the things required of him by law.

(7) The proceeds of the sale shall, by the sheriff, after first deducting his costs and expenses, be applied to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims and costs of the party taking up such livestock, and the remainder, if any, may be paid over to the owner of such livestock, if known, and if the owner is not known, then such remainder shall be deposited with the county treasurer, who shall keep the same in a public fund to be designated state grazing district fund (giving the name of the district). A separate fund, styled as above, shall be kept by the county treasurer for each of said districts within his county. The county treasurer shall make a record of the number and type of animals sold and the brands on same, if any, the amount received for same and the amount of deductions, which record shall be open to public inspection; and any person making claim to the board of county commissioners at any time within one (1) year from date of sale, of ownership of such livestock and submitting proof of ownership to such board, with such claim to the satisfaction of such board, shall be entitled to receive such excess received from the sale of such livestock. Any money received from the sale of any such livestock, which shall not be so claimed within one (1) year after such sale, shall, at the expiration of said period, be transferred to the general fund of the county.

(8) No officer, board or employee of any county or of any state district, nor any employee of such officer or board shall be liable for any

act performed in good faith in discharging official duties under this act; and all such acts shall be presumed to have been in good faith and in conformity with this act.

(9) The state district, or the party taking up such trespassing livestock, may cause same to be impounded at any suitable place within the state district, or within five (5) miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

(10) Any person taking or rescuing from the possession of a state grazing district or an agent thereof any animal taken up and impounded pursuant to this section shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding two hundred dollars ($200.00).

(11) Regarding fences within the external boundaries of state districts; the cost of construction and maintenance of fence-enclosing lands controlled by any member, nonmember or state district within the external boundaries of such state district, shall be borne by such member, nonmember or state district, unless otherwise provided for in the duly approved by-laws of such state district.

(12) In the event of the adoption of provisions to the by-laws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by such cost of construction and maintenance of fence, the state district's proportionate share of such costs and maintenance shall be financed only by assessments levied by the state district against the permittee members of the district upon consent thereto by fifty-five percentum (55%) of such permittee members.

(13) Nothing contained herein shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955.

Amendment

The 1955 amendment deleted a repetition of the phrase "and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession" in subd. (2); in subd. (3) deleted the word "of" which appeared in the proviso clause between the words "him" and "all"; inserted new material for subd. (10) and renumbered former subds. (10) and (11) to (11) and (12) and added subd. (13).

Separability Clause

Section 6 of Ch. 257, Laws 1955 read "If a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 5 of Ch. 257, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

Section 46-2704. Tax levy—special fund.

46-2704. Tax levy—special fund. Said county livestock protective committee may recommend to the board of county commissioners the levy of

a tax in an amount not to exceed twenty-five cents (25c) per head on all assessable cattle in the county on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 168, L. 1953; amd. Sec. 1, Ch. 10, L. 1955.

Amendment

The 1955 amendment added the word "assessable" between the words "all" and "cattle" and deleted the words "over one (1) year old" which appeared after the words "in the county."

Repealing Clause

Section 2 of Ch. 10, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 10, Laws 1955 provided the act should be in full force and effect from and after its passage and approval. Approved February 5, 1955.

TITLE 47—LOANS

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

47-101. (7702) Loan defined.

References

Cited or applied in State ex rel. Olsen v. Sundling, — M —, 281 P 2d 499, 502.

47-124. (7725) Legal interest.

Collateral References

Rate of interest for damages for period before judgment for injury to, or detention, loss or destruction of, property. 36 ALR 2d 337.

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-102. (8739) When the reason of a rule ceases, so should the rule itself.

References

Cited or applied in State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

49-105. (8742) Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

References

Cited or applied in New Silver Bell Min. Co. v. County of Lewis and Clark, — M —, 284 P 2d 1012, 1017.

49-109. (8746) No one can take advantage of his own wrong.

Operation and Effect

Where an oil and gas lessee was ready, able and willing to drill further wells and develop the lessor's property, an attack upon the lessee's title by lessors will relieve the lessee of the duty either to proceed with the drilling operations or the payment of the delay rentals specified during the contest of his title. Fey v. A. A. Oil Corporation, — M —, 285 P 2d 578, 587.

References

Cited or applied in Hansen v. Hansen, — M —, 297 P 2d 879, 883.

49-121. (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

References

Cited or applied in Shook v. Woodard, — M —, 290 P 2d 750, 754.

49-123. (8760) The law never requires impossibilities.

References

Cited or applied in Davis v. Burton, — M —, 278 P 2d 213, 218.

49-124. (8761) The law neither does nor requires idle acts.

References

Cited or applied in State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647; Davis v. Burton, — M —, 278 P 2d 213, 218.

49-125. (8762) The law disregards trifles.

References

Cited or applied in Davis v. Burton, — M —, 278 P 2d 213, 218.

49-131. (8768) Time does not confirm a void act.

References

Cited or applied in Carlson v. Flathead County, — M —, 293 P 2d 279, 284.

49-133. (8770) An interpretation which gives effect is preferred to one which makes void.

References
Cited or applied in State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

49-134. (8771) Interpretation must be reasonable.

References
Cited or applied in State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

TITLE 52—MORTGAGES

CHAPTER 2—MORTGAGES OF REAL PROPERTY

52-212. (8273) Recordation of mortgages, deeds of trust, etc.

Collateral References

Priority as between artisan's lien and chattel mortgage, as affected by statutory provision for recording mortgage. 36 ALR 2d 240.

CHAPTER 3—MORTGAGES OF PERSONAL PROPERTY

52-301. (8275) Chattel mortgages—interest which may be mortgaged, etc.

Operation and Effect

A chattel mortgage, which by its terms was to be security for future advances also, was security for future loans so that attachment will not lie in an action based on the default of the later loan, since the debt was secured. The chattel mortgage was plain and unambiguous and needed no construction so that parol evidence which tended to vary or alter the terms of the written mortgage was required to be disregarded. First Nat. Bank of Plains v. Green Mt. Soil Conservation District, — M —, 293 P 2d 289.

52-313. (8287) Sales—commencement and postponement.

Collateral References

Effect of purchase of property by pledgee on foreclosure of mortgage held as collateral security. 37 ALR 2d 1397.

TITLE 53—MOTOR VEHICLES

Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-106 to 53-108, 53-114, 53-116, 53-118, 53-119.1 to 53-122, 53-129.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-419, 53-423, 53-434, 53-448.
6. Additional fees or taxes on motor vehicles, 53-615, 53-615.1, 53-616, 53-618, 53-619, 53-624, 53-625, 53-628, 53-639 to 53-643.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES—DUTIES OF REGISTRAR

Section 53-101. Duties of registrar of motor vehicles—records.
53-106. Number plates.
53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
53-106.2. Amateur radio operators—special license plate.
53-106.3. Issuance—application—additional fee.
53-106.4. Rules and regulations—limit of one special plate for each operator.
53-106.5. List of radio operators' special plates—distribution to public officials.
53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.
53-107. Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand.
53-108. Renewal of registration.
53-114. Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.
53-116. Issuance of receipt and assignment of number plates.
53-118. Application for dealer's license.
53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.
53-119.2. Fees credited to general road fund.
53-120. Replacing number plates.
53-121. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden.
53-122. Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors—providing for transfer of funds from the motor vehicle fund of the registrar of motor vehicles to the motor vehicle recording fund (sometimes called the motor vehicle administrative fund)—providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in said motor vehicle recording fund for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles.
53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.

53-101. (1755) Duties of registrar of motor vehicles — records. 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, of motor and accessories dealers and of operators and chauffeurs, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, of all dealers in motor vehicles and automobile accessories and of operators and chauffeurs.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient.

4. In the case of dealers the records shall show the name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him.

5. The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars ($25,000.00), providing for the faithful performance of his duty. He shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and control of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of records and files which shall have ceased to be of any value the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all correspondence, motor card and application card records after the expiration of five (5) years from the date thereof, and all conditional sales contracts and chattel mortgages and records pertaining thereto after the expiration of five (5) years after the date the same have ceased to be liens on the motor vehicles described therein.

7. The registrar may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, sheriffs, and to chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

8. All such records shall be open to inspection during all reasonable business hours and the registrar of motor vehicles shall furnish any in-

formation from said records upon payment by the applicant of the cost of transcribing the information requested.

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755, R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957.

Amendment

The 1957 amendment in subd. 2 substituted "identifying number" for "manufacturer's engine and serial number"; in subd. 3 (c) substituted "identifying number" for "motor number"; in subd. 4 substituted "records" for "record"; in subd. 5 substituted the present second and third sentences for ones which read "He may appoint one deputy at a salary not to exceed thirty-three hundred dollars ($3,300.00) per year, and such number of civilian clerks, and for such time or times, at a salary of not to exceed one hundred and seventy-five dollars ($175.00) per month each, as may be authorized by the state board of examiners, the salary of which deputy and the salaries of which clerks shall be fixed by such board of examiners. The remaining clerical help shall be selected by the registrar of motor vehicles from among the inmates of the state prison" and substituted subd. 7 for one which formerly read "7. The registrar of motor vehicles shall, at the end of each month, prepare lists of certificates of registration and ownership issued for the current month, showing the number and kind of license issued, the name and address of owner and legal owner, the make of car and engine number. Such list shall be distributed to the sheriffs and treasurers of each county of the state and to chiefs of police of each incorporated city of the state by the registrar of motor vehicles."

Repealing Clause

Section 2 of Ch. 208, Laws 1957 repealed all acts and parts of acts in conflict therewith.

53-106. (1757) **Number plates.** (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle by the registrar of motor vehicles. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type, one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be renewed annually, shall bear a distinctive marking each year, and shall be furnished by the state.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be

serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be renewed by the registrar of motor vehicles at such time when the physical condition of numbered plates requires same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number one (1) and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers.

Number plates assigned to any motor vehicle shall be used only on the specific motor vehicle to which originally assigned.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8;

Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957.

Amendments

The 1955 amendment in subd. (1) substituted the present second sentence for one which read "Such number plate shall be in six series; one series for owners of motor cars, one for owners of motor vehicles, of the motorcycle type, one for dealers in each of the two types of vehicles above named, one for trailers and one for trucks"; in the first sentence of subd. (2) substituted "six inches wide and twelve inches in length" for "at least five inches wide and not less than thirteen inches in length," in the second sentence in the first provided clause substituted "he" for "the registrar of motor vehicles" "and" for "then" between the words "plates" and "such" "the registrar" for "he" before the words "shall determine" in the provided further clause substituted "registrar" for "registrar of motor vehicles" and in the last sentence of subd. (2) substituted the words "letters 'D,' 'UD,' or 'DTR,' such letters" for "letter 'D,' such letter."

The 1957 amendment made numerous changes in this section. For section prior to amendment see 1955 amendment note and parent volume.

Separability Clause

Section 2 of Ch. 236, Laws 1957 read "If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

Repealing Clause

Section 3 of Ch. 236, Laws 1957 repealed all acts and parts of acts in conflict therewith.

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured more than thirty (30) years prior to the date of the application referred to hereunder, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars ($5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars ($10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application

and register the motor vehicle therein described in the manner specified in section 53-101, Revised Codes of Montana, 1947, and shall deliver to the applicant two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: Section 53-106.1 added by Sec. 1, Ch. 123, L. 1955.

Title of Act

An act to amend chapter 1, Title 53, Revised Codes of Montana, 1947, by adding a new section 53-106.1 to provide for the registration of motor vehicles owned and operated solely as collectors' items; providing the fees to be paid for such registration; and providing for the issuance of license plates for such motor vehicles.

53-106.2. Amateur radio operators—special license plate. Any motor vehicle owner and resident of this state, who holds an unrevoked and unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission shall upon application on form prescribed by the registrar of motor vehicles be issued a special license plate in addition to the regular license plates, upon which special license plates in lieu of the numbers as prescribed by law for regular license plates, shall be inscribed the official amateur radio call letters of such applicant as assigned by said federal communications commission and shall be renewed concurrently with regular plates.

History: En. Sec. 1, Ch. 2, L. 1957.

Title of Act

An act authorizing the registrar of motor vehicles of the state of Montana to issue upon proper application a special license plate in addition to regular license plates, as provided for in section 53-108 of the Revised Codes of Montana, 1947, for resident motor vehicle owners who operate amateur radio stations; authorizing issuance of necessary rules and regulations by said registrar; authorizing lists of special license plate holders for law enforcement officers and specifying duties regarding such lists; providing for return of special license plate upon revocation or expiration of amateur radio license; and repealing all acts and parts of acts in conflict herewith.

53-106.3. Issuance — application — additional fee. The registrar of motor vehicles shall issue a special license plate to amateur radio operators upon application showing:

(1) Proof that applicant is holder of such amateur radio station license and operator's license;

(2) Compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles, and upon the payment of the regular license fee for license plates as provided by law; and,

(3) Payment of one dollar and fifty cents ($1.50) additional fee.

History: En. Sec. 2, Ch. 2, L. 1957.

53-106.4. Rules and regulations—limit of one special plate for each operator. The registrar of motor vehicles shall make such rules and regulations as may be necessary to procure compliance with all the laws of the state regulating the issuance of motor vehicle licenses relating to the use and operation of motor vehicles before issuing the special license

plates. The registrar shall not issue more than one (1) special license plate for any licensed amateur radio station in any one licensing period.

History: En. Sec. 3, Ch. 2, L. 1957.

53-106.5. List of radio operators' special plates—distribution to public officials. The registrar shall, on or before the first day of July of each year, furnish to the supervisor of the state highway patrol, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the registrar shall deem necessary, an alphabetically arranged list of the names, addresses and license plate numbers and letters of each person to whom a special license plate has been issued, and it shall be the duty of the supervisor, sheriffs and chiefs of police to maintain and keep current such lists for public information and inquiry, particularly in relation to public emergencies.

History: En. Sec. 4, Ch. 2, L. 1957.

53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license. The special license plate as herein provided is to be placed on the motor vehicle so that the regular plates are not covered by the special plate. When the motor vehicle is sold or otherwise transferred, the usual number plates will be left on the motor vehicle, and the special plate will be retained by the owner of the amateur radio station. This plate may be placed on another motor vehicle providing all requirements of section 2, subsections one (1) and two (2) above [53-106.3] are met. On the revocation or expiration of the amateur radio station and operator's license the special license plate as issued shall be returned to the registrar of motor vehicles.

History: En. Sec. 5, Ch. 2, L. 1957.

Repealing Clause

Section 6 of Ch. 2, Laws 1957 repealed all acts and parts of acts in conflict therewith.

53-107. (1758) **Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand.** Upon completion of the application for registration, in quintuplet, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Certificate of Registration and Tax Receipt," one (1) of which shall be marked "file copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership, and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. In the event the said certificate of ownership be in the possession or under the control of any person other than the person entitled to operate and possess the motor vehicle the same must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to

any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien, said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The reverse side of the certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

Owner's certificate of registration receipt to be signed, carried, and exhibited on demand. (a) Every owner, except owners of passenger cars, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, except passenger cars, to which it refers or shall be carried by the person driving or in control of such vehicle, except passenger cars, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department. (b) The provisions of this section requiring that a registration receipt be carried in the vehicle to which it refers or by the person driving the same shall not apply when such receipt is used for the purpose of making application for renewal of registration or upon a transfer of registration of said vehicle.

The term "motor vehicle" includes automobile, truck, motorcycle, semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front and thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof, by affidavit, of such stamping is filed with him.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 200, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 200, provided the act should be in effect from and after June 30, 1955.

53-108. (1758.1) **Renewal of registration.** Every vehicle registration under this act shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114, Revised Codes of Montana, 1947, as amended by section 1, chapter 256, Laws of 1955, and 53-112 [53-122], Revised Codes of Montana, 1947, as amended by section 1, chapter 41, Laws of 1955, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until cancelled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually. Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicle between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

Any purchaser of a motor vehicle from a duly licensed motor vehicle dealer which has not been registered or reregistered for the current year may during the time of [the] certificate of ownership thereto is in the process of being transferred in the office of the registrar of motor vehicles, upon making an affidavit to that effect upon a form prescribed by the registrar of motor vehicles and upon the payment of a fee of one dollar ($1.00) to be collected by the county treasurer and remitted to the board, obtain from the county treasurer of the county in which said vehicle is subject to tax a temporary windshield sticker of such size, color and design as the board may prescribe, to be validated by the county treasurer for a period of thirty (30) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle and upon displaying the number plates or plate assigned thereto for the previous year (unless the seller has been unable to deliver such previous year's plate or plates) shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, that any purchaser of a new motor vehicle from a duly licensed motor vehicle dealer shall have

the grace period of three (3) days from the date of purchase to make such affidavit and obtain such sticker, and it shall not be a violation of this chapter or any other law for such purchaser to operate such new motor vehicle upon the streets and highways of this state without number plates or sticker during the said three-day period; providing further that such purchaser must have in his possession a valid bill of sale or other satisfactory evidence of ownership.

History: En. subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957.

Compiler's Notes

The reference in the first paragraph to section 53-112 is an apparent error and the reference should be to 53-122, therefore the compiler has bracketed in the reference to 53-122.

The bracketed word "the" in the third paragraph was inserted by the compiler.

Amendments

The 1955 amendment substituted "registrar of motor vehicles" for "registrar" in the first paragraph; substituted "January fifteenth" for "January first" in the second paragraph and added the last paragraph.

The 1957 amendment substituted "January first" for "January fifteenth" and "February fifteenth" for "February first" in the second paragraph and added the proviso clause in the third paragraph.

Repealing Clause

Section 2 of Ch. 146, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 146, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or re-registration, upon blank form to be prepared and furnished by the registrar of motor vehicles, executed in quintuplet, which application shall contain:

(a) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(b) Name and address of conditional sales vendor, mortgagee or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.

(c) Description of motor vehicle, including make, year model, engine and serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) In case of re-registration, the license number for the preceding year.

(e) Such other information as the registrar of motor vehicles may require.

(2) Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) The applicant shall, upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or re-registration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or re-registration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or re-registration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except as hereinafter provided, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be the subject to assessment, levy and taxation more than once in each year, and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise.

(6) The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 53-617, Revised Codes of Montana, 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or re-registration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "Taxes on this vehicle due January 1st of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application; and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the

applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957.

Compiler's Note

Section 2 of Ch. 256, Laws 1955 is compiled as section 84-406.

Amendments

The 1955 amendment in subd. (1) deleted the words "of the county" which appeared after the words "county treasurer"; in subd. (3) inserted the word "property" between the words "personal" and "taxes"; in subd. (5) inserted the words "except as hereinafter provided" substituted the word "to" for "of" between the words "subject" and "assessment" and substituted the proviso clause for the words "viz., the first day in January in each year, which shall be the time of assessment for tax purposes of motor vehicles in stock, in dealer's possession or in dead storage, as well as in use, subsequent registrations, if any, of the same vehicle in the same year not being subject to payment of taxes"; in subd. (6) substituted the words "shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 53-617, Revised Codes of Montana, 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year" for the words "and such vehicle shall not be subject to assessment and taxation for said vehicle until the first day of January of the year next succeeding, but nothing herein contained shall exempt such vehicle from taxation in the possession of any person on said assessment date"; in subd. (7) inserted at the end of the second paragraph the words "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

The 1957 amendment in subd. (8) substituted the word "facts" for "fact" and deleted all of subd. (9) for text of which see parent volume.

Repealing Clause

Section 2 of Ch. 223, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Collateral References

Lack of proper automobile registration or operator's license as evidence of operator's negligence. 29 ALR 2d 963.

53-116. (1759.2) Issuance of receipt and assignment of number plates. Upon receipt of application for registration, in quintuplet, and payment of license fee and taxes as herein provided, the county treasurer shall file one copy of said application in his office; issue to the applicant two (2) copies of the application entitled "Owner's Certificate of Registration and Tax Receipt" one (1) of which shall be marked "file copy"; forward one (1) copy to the county clerk and recorder; and he shall daily forward to the registrar of motor vehicles one (1) copy of the application for registration. The county treasurer shall also, and at the same time, assign such motor vehicle a distinctive number, viz., the license plate number, and deliver to the applicant two (2) license plates, as received from the registrar of motor vehicles which shall bear such distinctive numbers. The registrar shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January first of each year. It shall not be necessary for the county treasurer, in said receipt, to segregate the amount of said taxes for state, county, school district and municipal purposes.

History: En. Subd. 3, Sec. 1, Ch. 158, L. 1933; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955.

Amendment

The 1955 amendment substituted the present first sentence for one which read "Upon receipt of application for registration and payment of license fee and taxes as herein provided, the county treasurer shall file one copy of said application in his office and issue to the applicant a receipt executed in triplicate, delivering one copy of said receipt to the applicant, one copy to the county clerk and recorder and retaining one copy for his office; and he shall daily forward to the registrar of motor vehicles a duplicate copy of all applications for registration."

Repealing Clause

Section 2 of Ch. 199, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 199, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

53-118. (1759.4) Application for dealer's license. Every dealer in new motor vehicles, used motor vehicles, trailers, semitrailers, or automobile accessories shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a vertified application for registration as a dealer on a blank to be furnished by the registrar for that purpose, and containing the information therein required. Each application must be accompanied by the registration fee hereinafter named. Dealers registration must be renewed and paid for annually, and an application for reregistration must be filed not later than January first of each year. Upon the registration of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer or semitrailer dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial registration number as a dealer and furnish every dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers and/or semitrailers (new or used) only. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one registration fee shall be required of any one dealer. Dealers of all classes are hereby prohibited from using or displaying dealer's license plates on any motor vehicle except those held for sale or used principally in the conduct of the dealer's business in selling, demonstrating or servicing. No dealer's license plates shall be used or displayed on vehicles normally used exclusively for hire or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles that any such dealer has used the dealer's license in a manner other than the one permitted above the registrar of motor vehicles may revoke such dealer's license. Any dealer violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five ($25.00) dollars and not more than one hundred ($100.00) dollars.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Separability Clause

Section 3 of Ch. 245, Laws 1955 read "If any section, subdivision or sentence of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of this act."

Repealing Clause

Section 4 of Ch. 245, Laws 1955 repealed all acts and parts of acts in conflict therewith.

53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by the registrar of motor vehicles and upon payment therefor of a fee of five dollars ($5.00). Such permit shall be for the transit of the vehicle only, and the vehicle shall not, at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever, for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application.

History: En. Sec. 1, Ch. 182, L. 1955.

Title of Act

An act to provide for the payment of fees and issuance of special permits on vehicles engaged in a single movement on the public highways of this state; providing for the fees for issuance of special permits; providing that such permits be for the transit of the vehicle only and for one (1) transit only; providing that the special permits shall be issued by the county treasurer; providing that the fees collected under this act shall belong to the general road fund of the county; providing for the effective date of this act; and repealing all acts and parts of acts in conflict herewith.

53-119.2. Fees credited to general road fund. All fees collected under this act shall belong to the general road fund of the county and be for the use and benefit of that fund.

History: En. Sec. 2, Ch. 182, L. 1955.

Repealing Clause

Section 3 of Ch. 182, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 182, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

53-120. (1759.6) **Replacing number plates.** In the event of loss, mutilation, or destruction of number plates, the owner of the registered motor vehicle may obtain from the registrar of motor vehicles, duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of two dollars ($2.00).

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 47, L. 1955.

Amendment

The 1955 amendment raised the fee from one dollar to two dollars.

Repealing Clause

Section 2 of Ch. 47, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 47, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

53-121. (1759.6) Residents operating motor vehicles under licenses issued by any state other than Montana forbidden. It shall especially be provided that a resident of the state of Montana shall not operate a motor vehicle under a license issued by any other state than Montana.

History: En. Subd. 8, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 195, L. 1953; amd. Sec. 1, Ch. 247, L. 1957.

Amendment

The 1957 amendment deleted the words "except when such vehicle is a part of an interstate fleet registered in accordance with the provisons of section 53-114" which appeared at the end of this section.

Repealing Clause

Section 2 of Ch. 247, Laws 1957 repealed all acts and parts of acts in conflict therewith.

53-122. (1760) Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors—providing for transfer of funds from the motor vehicle fund of the registrar of motor vehicles to the motor vehicle recording fund (sometimes called the motor vehicle administrative fund)—providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in said motor vehicle recording fund for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles. Registration or license fees shall be paid upon registration or re-registration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars ($30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars ($5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars ($2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars ($15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars ($5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks, ten dollars ($10.00);

Electrically driven passenger vehicles, ten dollars ($10.00);

All motorcycles, two dollars ($2.00);

Tractors and/or trucks, ten dollars ($10.00);

Busses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars ($2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars ($5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars ($10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars ($15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires;

Bicycles with motor attachments, one dollar ($1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The funds in said county motor vehicle fund shall be used as follows:

(a) Fifty per cent (50%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, or the owners of which reside within the boundaries of any incorporated city of the state of Montana which lies within one (1) mile of the city limits of an incorporated city of the state of Montana having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, and twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles, shall be held by the county treasurer and segregated from other county road funds and designated as "city road fund," to be used in the city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

(b) The license fees held in the city road fund, as hereinbefore provided, at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the "city road fund," shall be used by the city council of such city having the population of thirty-five thousand (35,000) or more, or by the city council of such city which lies within one (1) mile of the city limits of an incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of

less than seven hundred and fifty (750) square miles, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of supervision of the county surveyor shall not exceed five per cent (5%) of the cost of said work.

(c) The net license fees derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of the county from which the registration fee came, such fees, excepting apportionment to the city road fund, to be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county, including city streets forming component parts of arterial highways within the corporate cities of less population than thirty-five thousand (35,000), according to the federal census of 1930, within the boundaries of said county, other than any corporate city entitled to receive or expend the "city road fund," within the boundaries of said county.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half (½) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar ($1.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, mentioned and described in sections 53-110 and 53-112, and in section 53-135, shall hereafter be deposited in, and paid into, the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles.

There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees.

Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording fund more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955.

Compiler's Notes

Chapter 99 of Laws 1955 provided for the creation of "The Montana Fact-Finding Committee on Highways, Streets and Bridges," prescribed its duties and appropriated money for its expenses. Section 8 of that act appropriated the money and provided for an additional fee for the registration of busses, trucks, or trailers in 1956. This section reads as follows:

"Section 8. There is hereby appropriated from the state highway general fund to the committee the sum of thirty-five thousand dollars ($35,000.00), or so much thereof as may be necessary to carry out the purposes of this act; provided, that in addition to all other fees prescribed by law, there shall be paid for each bus, truck, or trailer, registered for operation during the calendar year of 1956, at the time of registration, the following amounts:

"For each trailer over 6,000 lbs. and up to 24,000 lbs. ----------$0.50

"For each trailer over 24,000 lbs.--$1.00

"For each passenger bus paying fees under the Gross Vehicle Weight Law ----------$1.00

"For each truck up to 6,000 lbs.--$0.25

"For each truck over 6,000 lbs. and up to 24,000 lbs. ----------$0.50

"For each truck over 24,000 lbs.--$1.00

That all such additional registration fees shall be remitted monthly by the county treasurer, on or before the fifteenth day of the month after collection, to the treasurer of the state of Montana for deposit in the state highway fund to replace the thirty-five thousand dollars ($35,000.00), or so much thereof as may be necessary to carry out the purposes of this act. Any excess funds shall remain in the highway fund for the construction, reconstruction, maintenance, engineering on the public highways of this state."

Amendment

The 1955 amendment in the first paragraph substituted the word "or" for a "comma" which appeared between the words "vehicles" and "trailers" and deleted the words "or automobile accessories" which appeared after this same word "trailers"; between the third and fourth paragraphs above deleted a former paragraph which read "Dealers in automobile accessories, except automobile dealers, ten dollars ($10.00)"; in subd. (a) inserted the words "and twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles," after the words "federal census of 1930,"; in subd. (b) after the

words "as hereinbefore provided," inserted the words "at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the 'city road fund,'" and after the words "federal census of 1930," inserted the words "or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of less than seven hundred and fifty (750) square miles,"; in subd. (c) at the end of the first paragraph inserted the words "other than any corporate city entitled to receive or expend the 'city road fund,' within the boundaries of said county" and in the third paragraph substituted "or" for a "comma" between the words "vehicles" and "trailers" and deleted after the word "trailers" the words "or automobile accessories."

Repealing Clause

Section 2 of Ch. 41, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 41, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 23, 1955.

53-129. (1760.7) **Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.** (1) Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner thereof uses the vehicle while engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, Revised Codes of Montana, 1947, as amended, nor to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into as hereinafter set forth.

(2) (a) There is hereby created for the purpose of the administration of this act a state reciprocity board, which consists of five (5) members to be appointed by the governor. One of said members shall be a member of the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; and one shall be the attorney for the Montana state highway commission. The members of the state reciprocity board shall meet in the offices of the state highway commission at the state capitol and organize as a state reciprocity board during the first week in July, 1955, or as soon thereafter as possible.

At the first annual meeting and at each annual meeting thereafter the board shall elect a secretary who may be, but need not be, a member of said board, and the board shall elect a chairman from its own membership who shall hold office for one (1) year. Election as chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every thirty (30) days, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(b) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Three (3) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least three (3) members.

(3) (a) The state reciprocity board shall have the power to enter into agreements or arrangements with the duly authorized representatives of other states, the District of Columbia, territories or possessions of the United States and foreign states, provinces or countries granting exemption to owners of vehicles which are properly registered or licensed in such jurisdictions, and upon which evidence of registration is conspicuously displayed, from the payment, wholly or partially, of any taxes, fees or other charges imposed upon such owners with respect to the ownership or operation of such vehicles under the laws of this state. Such agreements or arrangements shall provide that owners of vehicles registered or licensed in this state who operate vehicles upon the highways of such other states, the District of Columbia, territories or possessions of the United States and foreign states, provinces or countries shall receive substantially equivalent exemptions, benefits and privileges as are extended to owners of vehicles from such jurisdictions in this state.

(b) Agreements or arrangements entered into under the authority herein granted may contain provisions authorizing an owner or owners of one of the states, district, territories or possessions of the United States or foreign states, provinces or countries which is a party thereto to register or license vehicles in another jurisdiction which is a party thereto. Vehicles registered or licensed in one of such jurisdictions under such provision shall be exempt from registration or licensing requirements in the other jurisdiction or jurisdictions which are parties thereto and shall be entitled to all exemptions, benefits and privileges granted with respect to other vehicles registered or licensed in such jurisdiction, as to such interstate operations.

(c) Agreements or arrangements entered into under the authority herein granted may contain provisions denying the exemptions, benefits and privileges granted thereunder to any owner who violates conditions stated therein or who violates rules and regulations for the administration of reciprocal exemptions, benefits and privileges issued by the state reciprocity board.

(d) The state reciprocity board is authorized to examine the legal requirements of motor vehicle registration, license and weight fee statutes of states which grant reciprocal privileges to out-of-state owners but which do not authorize negotiation or execution of agreements by administrative officials and it is authorized to determine, by such examination, and to declare the extent and nature of the reciprocal exemptions, benefits and privileges to which owners of vehicles from such states shall be entitled under the laws of this state.

(e) All agreements, arrangements, declarations and rules and regulations authorized by this section shall be in writing and shall become effective when filed with the secretary for the state reciprocity board who shall make copies available to the public upon request.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955.

Amendment

The 1955 amendment in subd. (1) substituted the sentence "The treasurer shall thereupon issue to the applicant a copy of the application entitled 'owner's certificate of registration receipt' and forward a duplicate copy of certificate of registration to the registrar of motor vehicles" for a former one which read "The treasurer shall thereupon forward to the registrar of motor vehicles such application form"; deleted a sentence which read "Upon receipt of the application for registration, the registrar of motor vehicles shall issue to the owner of the vehicle a registration receipt"; added a new subd. (2) and renumbered former subd. (2) as subd. (3); in subd. (3) (a), (c) and (d) substituted "state reciprocity board" for "registrar of motor vehicles" and in (e) of subd. (3) substituted "with the secretary for the state reciprocity board" for "in the office of the registrar of motor vehicles."

Repealing Clause

Section 2 of Ch. 143, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 143, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

Section 53-419. Supervisor to administer act—appeal to court.
53-423. Further exceptions to requirement of security.
53-434. Proof required upon certain convictions.
53-448. Surrender of license and registration.

53-419. Supervisor to administer act—appeal to court.

(a) * * * [Same as parent volume.]

(b) An executive assistant to the supervisor shall be appointed by the "Montana highway patrol board," subject to and in accordance with sections 31-105 and 31-106, who shall be vested with full power and authority to act for and on behalf of the supervisor in the administration of this act; and who shall perform such other and further duties as shall be prescribed by the Montana highway patrol board. The salary of the executive assistant shall be the same as that of a captain.

(c) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957.

Amendment

The 1957 amendment in the last sentence of subd. (b) substituted the words "the same as that of a captain" for "four thousand two hundred dollars ($4,200.00) per year."

Repealing Clause
Section 2 of Ch. 164, Laws 1957 repealed all acts and parts of acts in conflict therewith.

53-423. Further exceptions to requirement of security. The requirements as to security and suspension in section 53-422 shall not apply:

1. to the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

2. to the operator or the owner of a motor vehicle legally parked at the time of the accident;

3. to the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who has been operating such motor vehicle without such permission; nor

4. if, prior to the date that the supervisor would otherwise suspend license and request and require of the registrar suspension of registration or nonresident's operating privilege under section 53-422, there shall be filed with the supervisor evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident; nor

5. if, prior to the date that the supervisor would otherwise suspend the license or the nonresident's operating privilege under section 53-422, there shall be filed with the supervisor evidence satisfactory to him that the person who would otherwise be required to file security has in any manner settled the claims of the other persons involved in the accident and if the supervisor determines that, considering the circumstances of the accident and the settlement, the purposes of this act and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. For the purpose of administering this section, the supervisor may consider a settlement made by an insurance company as the equivalent of a settlement made directly by the insured.

History: En. Sec. 6, Ch. 204, L. 1951; amd. Sec. 1, Ch. 187, L. 1957.

Amendment
The 1957 amendment substituted a semicolon for a period and added the word "nor" to the end of subd. 4 and added subd. 5.

Repealing Clause
Section 2 of Ch. 187, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date
Section 3 of Ch. 187, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

53-434. Proof required upon certain convictions. (a) Whenever the supervisor or the board, under any of the laws of this state, suspends, revokes, or cancels the license of any person upon receiving record of a conviction or a forfeiture of bail, the supervisor or the board, shall also request and require of the registrar the suspension of the registration for

all motor vehicles registered in the name of such person, except that the registrar shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

(b) Such license and registration shall remain suspended, revoked or cancelled and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(c) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension, revocation or cancellation of a license, or for operating a motor vehicle upon the highways without being licensed to do so, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

(d) Whenever the supervisor or the board suspends, revokes or cancels a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended, revoked or cancelled unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

History: En. Sec. 17, Ch. 204, L. 1951; amd. Sec. 1, Ch. 106, L. 1957.

Amendment

The 1957 amendment inserted the words "or the board" immediately following "supervisor" each time they appear in subds. (a) and (d) and in subd. (c) inserted the word "the" between the words "by" and "final."

Repealing Clause

Section 2 of Ch. 106, Laws 1957 repealed all acts and parts of acts in conflict therewith.

53-448. Surrender of license and registration. Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this act, shall have been cancelled or terminated, or who shall neglect to furnish other proof upon request of the supervisor shall immediately return his license and registration to the supervisor. If any person shall fail to return to the supervisor the license or registration as provided herein, the supervisor shall forthwith direct any peace officer or highway patrolman to secure possession thereof and to return the same to the supervisor. The supervisor shall thereupon forward the registration to the registrar.

History: En. Sec. 31, Ch. 204, L. 1951; amd. Sec. 1, Ch. 107, L. 1957.

Amendment

The 1957 amendment inserted the words "or highway patrolman" in the second sentence.

Repealing Clause

Section 2 of Ch. 107, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

Section 53-615. Additional fees on trucks, tractors, trailers and semitrailers.
53-615.1. Three unit combination—fees in lieu of gross weight fees provided in 53-615—marking on tractor.
53-616. Additional fees on trucks, truck-tractors, trailers and semitrailers from other states.
53-618. Time for payment of fees—half fee after July first.
53-619. Time for payment of fees by nonresidents.
53-624. Enforcement of act.
53-625. Reciprocity—proportional registration of fleets of motor vehicles engaged in interstate commerce.
53-628. Trucks, truck tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready mix concrete, equipment or special vehicles.
53-639. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly-owned special mobile equipment.
53-640. Issuance of identification plate and receipt—contents.
53-641. Attaching receipt to equipment—inspection.
53-642. "Special mobile equipment" defined.
53-643. Expiration date of plate.

53-615. Additional fees on trucks, tractors, trailers and semitrailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I:

Up to 6,000 lbs.	$ 6.00
6,001 lbs. or more, and less than 8,000 lbs.	10.00
8,001 lbs. or more, and less than 10,000 lbs.	14.00
10,001 lbs. or more, and less than 12,000 lbs.	16.00
12,001 lbs. or more, and less than 14,000 lbs.	18.00
14,001 lbs. or more, and less than 16,000 lbs.	22.00
16,001 lbs. or more, and less than 18,000 lbs.	30.00
18,001 lbs. or more, and less than 20,000 lbs.	40.00
20,001 lbs. or more, and less than 22,000 lbs.	50.00
22,001 lbs. or more, and less than 24,000 lbs.	75.00
24,001 lbs. or more, and less than 26,000 lbs.	100.00
26,001 lbs. or more, and less than 28,000 lbs.	125.00
28,001 lbs. or more, and less than 30,000 lbs.	165.00
30,001 lbs. or more, and less than 32,000 lbs.	210.00
32,001 lbs. or more, and less than 34,000 lbs.	255.00
34,001 lbs. or more, and less than 36,000 lbs.	300.00
36,001 lbs. or more, and less than 38,000 lbs.	345.00
38,001 lbs. or more, and less than 40,000 lbs.	390.00
40,001 lbs. or more, and less than 42,000 lbs.	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight described above, and as set by the licensee in his application except as otherwise provided in this act the following fees:

Schedule II:

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use	Exempt
Up to 2,500 lbs. for commercial use	$ 3.50
2,501 lbs. or more, and less than 6,000 lbs.	4.50
6,001 lbs. or more, and less than 8,000 lbs.	12.00
8,001 lbs. or more, and less than 10,000 lbs.	14.00
10,001 lbs. or more, and less than 12,000 lbs.	16.00
12,001 lbs. or more, and less than 14,000 lbs.	18.00
14,001 lbs. or more, and less than 16,000 lbs.	22.00
16,001 lbs. or more, and less than 18,000 lbs.	30.00
18,001 lbs. or more, and less than 20,000 lbs.	40.00
20,001 lbs. or more, and less than 22,000 lbs.	50.00
22,001 lbs. or more, and less than 24,000 lbs.	75.00
24,001 lbs. or more, and less than 26,000 lbs.	100.00
26,001 lbs. or more, and less than 28,000 lbs.	125.00
28,001 lbs. or more, and less than 30,000 lbs.	165.00
30,001 lbs. or more, and less than 32,000 lbs.	210.00
32,001 lbs. or more, and less than 34,000 lbs.	255.00
34,001 lbs. or more, and less than 36,000 lbs.	300.00
36,001 lbs. or more, and less than 38,000 lbs.	345.00
38,001 lbs. or more, and less than 40,000 lbs.	390.00
40,001 lbs. or more, and less than 42,000 lbs.	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided in this act, a fee equal to fifty cents (50c) for each foot of over-all trailer body length, exclusive of bumpers and hitch.

Provided, that in addition to the fees provided for in Schedules I and II of this act, for each motor truck, truck-tractor, trailer, or semitrailer hauling loads in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, Revised Codes of Montana, 1947, as amended by section 1, chapter 73, Laws of 1953, and all other amendments thereto, there shall be collected a fee of fifty dollars ($50.00) for each two thousand (2,000) pounds, or fraction thereof.

Provided, that in lieu of the additional fee provided in this section there shall be collected a fee of five dollars ($5.00) on any motor truck, truck-tractor, trailer or semitrailer used only for the purpose of transporting any air compressor, rock crusher, conveyor, hoist, wrecker, donkey engine, cook house, tool house or bunk house attached to or made a part of such motor truck, trailer or semitrailer.

Provided further, on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to

be used on the farm, orchard or dairy, except motor trucks owned and operated by cooperative associations or cooperative marketing associations, shall be paid and collected annually a fee equal to twenty per cent (20%) of the fees provided in Schedule I and Schedule II above; provided, however, the minimum fee under Schedule I and Schedule II shall be four dollars ($4.00). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

Provided further, that there shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, used exclusively in hauling livestock, logs, ready-mix concrete and pole trailers and on "low-boy trailers," used exclusively for the hauling of equipment and on tractors permanently attached to such "low-boy trailers."

When the gross weight license fee applied for on any vehicle exceeds twenty-four thousand (24,000) pounds, licenses for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three-months' period for one-fourth (¼) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar ($1.00) shall be charged. The state highway commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

No vehicle licensed under the provisions of this section shall be operated over the public highways unless the owner and/or operator thereof within ten (10) days after the expiration of any such three-month period apply for, and pay the required fee for, a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) days, shall be guilty of a misdemeanor, and in addition shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police shall impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol, until such requirement is met.

Provided further, that there shall be paid and collected anually for each bus or auto stage with the exception of school busses the sum of seven dollars ($7.00) per seat exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof; provided further, that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule hereinabove established; provided further, that school busses shall not be exempt if they enter charter service.

History: En. Sec. 1, Ch. 219, L. 1951; amd. Sec. 1, Ch. 139, L. 1953; amd. Sec. 1, Ch. 258, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 258, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 258, Laws 1955 provided the act should be in effect from and after January 1, 1956.

Construction

Appeal by the highway commission from a declaratory judgment was dismissed as moot where the question was whether or not the 1953 amendment which increased the truck license fees was effective as to licensees who had their license at the time of the effective date of the increase, since all such licenses expired at the end of 1953. Bell v. State Highway Comm., 128 M 122, 271 P 2d 425, 427. (Dissenting opinion, 128 M 122, 271 P 2d 425, 427.)

53-615.1. Three unit combination—fees in lieu of gross weight fees provided in 53-615—marking on tractor. In lieu of the gross weight fees provided in section 1 of chapter 219 of the Session Laws of 1951, as amended by section 1 of chapter 139 of the Session Laws of 1953, or as subsequently amended (being section 53-615 of the Revised Codes of Montana), the owner of any motor truck or truck-tractor used or to be used on the highways of the state of Montana in connection with two trailers or semitrailers at the same time, as a three unit combination, shall register all such vehicles to be operated by such owner as three unit combinations, in the following manner:

(1) By paying the registration and fees covering the maximum practical gross vehicle weight for such truck or truck-tractor, but not less than the actual operating gross weight under the provisions of section 53-122, as amended, section 53-615, as amended, and section 53-114, as amended, and

(2) By registering such trailers in accordance with the provisions of section 53-114, as amended, and section 53-122, as amended, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with the provisions of section 53-615, as amended, on each two trailers, on the combined gross vehicle weight, computed as a single unit.

(3) Vehicles on which fees are paid in accordance with this provision shall be marked with a distinctive mark to be designated by the highway commission and the tractor or truck-tractor shall have marked thereon the total gross vehicle weight for which tax has been paid on the combined motive power and trailing load, but nothing herein shall be construed as authorizing axle loads in excess of those provided by section 32-1123, as amended, of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 251, L. 1955.

Repealing Clause

Section 2 of Ch. 251, Laws 1955 repealed all acts and parts of acts in conflict therewith.

53-616. Additional fees on trucks, truck-tractors, trailers and semitrailers from other states. In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer and semitrailer licensed for that year in another jurisdiction and operated upon an itinerant basis in this state upon each entrance into the state of Montana, based upon the application of the nonresident operator, a fee to be computed as follows:

Five dollars ($5.00) for each trip for the first two hundred (200) miles or less, seven dollars and fifty cents ($7.50) for each trip over two hundred (200) miles, and up to four hundred (400) miles or less, ten dollars ($10.00) for each trip over four hundred (400) miles, on any vehicle or on each truck, truck-tractor, semitrailer and full trailer in a combination of said vehicles of over six thousand (6,000) pounds gross weight; provided, however, such fees shall not apply to any trailer the principal use of which is living quarters, temporary or permanent or to any vehicle of a carnival which is under contract with a state, county or district fair association.

Such temporary trip permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by the state highway commission, and shall be displayed at all times while such vehicle is being operated on the highways of this state by posting the same upon the windshield of each such vehicle or in another prominent place thereon where it may be readily legible. Provided further, that the state highway commission may limit the operation of such vehicles in this state to a definite period of time and provided further that each trip shall be defined as the total number of miles traveled within the state of Montana.

History: En. Sec. 2, Ch. 219, L. 1951; amd. Sec. 1, Ch. 177, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 177, Laws 1955 repealed all acts and parts of acts in conflict therewith.

53-618. Time for payment of fees—half fee after July first. Residents of the state of Montana, or nonresidents, who owns trucks, trailers or semitrailers, busses or new passenger automobiles and operate the same upon the highways of the state of Montana shall at the time they make application for their Montana license as provided for in section 53-114, Revised Codes of Montana, 1947, pay the fees herein prescribed; provided that said residents or nonresidents who make application for a license after the first day of July of any year shall pay one-half (½) of the fees provided for herein.

History: En. Sec. 4, Ch. 219, L. 1951; amd. Sec. 1, Ch. 175, L. 1955.

Amendment

The 1955 amendment inserted the words "or nonresidents" both times they appear.

Repealing Clause

Section 2 of Ch. 175, Laws 1955 repealed all acts and parts of acts in conflict therewith.

53-619. Time for payment of fees by nonresidents. Nonresident owners or operators of trucks, trailers and semitrailers shall immediately upon their arrival in the state of Montana contact the nearest state highway patrol or any state highway commission office or the county sheriff or the county treasurer's office and secure the license and pay the fees as in this act prescribed; provided that all fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 5, Ch. 219, L. 1951; amd. Sec. 1, Ch. 89, L. 1955.

Amendment

The 1955 amendment inserted the words "owners or operators of" after the first

word of the section and inserted the words "or any state highway commission office" after the word "patrol."

Repealing Clause

Section 2 of Ch. 89, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 89, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 1, 1955.

53-624. Enforcement of act. It shall be the duty of the Montana state highway patrol and any designated and duly appointed employee of the state highway commission to enforce the provisions of this act and each member thereof is hereby instructed to make examinations and inspection of trucks, trailers and semitrailers, busses, or automobiles operating upon the highways in this state, to ascertain whether or not the provisions of this law have been complied with.

History: En. Sec. 10, Ch. 219, L. 1951; amd. Sec. 1, Ch. 156, L. 1955.

Amendment

The 1955 amendment inserted the words "and any designated and duly appointed employee of the state highway commission."

Repealing Clause

Section 2 of Ch. 156, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 156, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

53-625. Reciprocity — proportional registration of fleets of motor vehicles engaged in interstate commerce. (a) Reciprocity shall be granted, notwithstanding any thing to the contrary herein, in accordance with section 53-129, Revised Codes of Montana, 1947, as amended.

(b) Any owner or operator engaged in operating fleets of two or more motor vehicles in this state in interstate commerce may license such fleet for operation in this state by filing a sworn application with the state highway commission and an identical copy with the county treasurer or county treasurers of the proper county or counties of licensing declaring the total mileage operated during the preceding calendar year or fiscal year, as designated by the state reciprocity board, in this state and in all states having on file with the state reciprocity board a valid agreement or arrangement providing for proportional payment of the annual fees provided in this act. Said statement shall describe and identify each such vehicle to be operated in this state during the ensuing license year. At the discretion of the state reciprocity board, such interstate fleet may be licensed on the basis of proportional vehicle proration or proportional dollar proration. For the purpose of this act proportional vehicle proration is defined as the licensing of a sufficient number of certain vehicles under this section to produce total fee payments not less than an amount obtained by applying the proportion of in-state fleet miles to total fleet miles, as reported in said statement, to the fees which would otherwise be required for total fleet licensing in this state. Proportional dollar proration is defined as the payment of sufficient fees under this section to equal the amount produced by applying the proportion of in-state fleet miles to total fleet miles, as reported in said statement, to the fees which would otherwise be required for total fleet licensing in this state. The state high-

way commission, on payment of the proper fees under this section, shall upon payment of a fee of two dollars for each motor vehicle issue distinctive plates, stickers or other identification for each vehicle named in said statement identifying it as an interstate fleet which shall be exempt from all further license and weight fee requirements of this state, which may be specified in Title 53, Chapter 6, Replacement Volume Number Three (3) of the Revised Codes of Montana, 1947, and acts amendatory, provided, that each of such vehicles is properly and duly licensed and registered in this state or some other state, district, possession or territory of the United States or some foreign province, state or country. The proportional licensing provisions of this section shall apply to vehicles added to said fleet and operated in this state during the license year. Montana operators electing to license an interstate fleet shall comply with all requirements of this section relating to the payment of property taxes on his entire fleet.

Mileage proportions for interstate fleets not operated in this state during the preceding year will be determined by the state highway commission upon the sworn application of the applicant on forms to be supplied by the state highway commission, which will show the operations of the preceding year in other states and the estimated operation in Montana or if no operations were conducted the previous year a full statement of the proposed method of operation.

Any owner or operator complying with and being granted proportional licensing shall preserve the records on which the application is made for a period of four (4) full years following the year upon which said application is based. Upon request of the state highway commission, the owner or operator agrees to make such records available to the state highway commission at its offices for audit as to accuracy of computation and payments, or to pay the costs of an audit by the state highway commission or its duly appointed representative at the home office of the owner or operator. If by audit, it is determined that the owner or operator should have licensed more vehicles or paid higher fees in Montana under provisions of this paragraph, the state highway commission may deny such owner or operator the right of any further benefits by reason of any reciprocal agreement or arrangement until the fees for such additional vehicle or vehicles which should have been licensed are paid to the state highway commission. All license fees which should have been paid under the provisions of this paragraph shall be a lien upon all the property of the owner or operator and such lien shall attach at the time the license fees shall be determined by the state highway commission and shall have the effect of an execution duly levied on such property of the owner or operator and shall so remain until said additional fees, so determined, are paid or the property sold for the payment thereof.

(c) The license and weight fees provided for in this act shall mean the fees specified in Title 53, Chapter 6, Replacement Volume Number Three (3) of the Revised Codes of Montana, 1947, and acts amendatory.

History: En. Sec. 11, Ch. 219, L. 1951; amd. Sec. 1, Ch. 231, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 231, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 231, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 12, 1957.

53-628. Trucks, truck tractor or bus marked with weight or capacity —markings on farm, logging, livestock, ready mix concrete, equipment or special vehicles. Each truck, truck tractor or bus shall have permanently marked in clearly visible letters and numbers at least two (2) inches in height on the driver's side of said vehicle, the maximum gross weight or maximum gross weight of the combinations of vehicles or seating capacity for which said vehicle is taxed under this act. Any such vehicle registered and taxed as a farm, logging, livestock, ready mix concrete, low boy or special fee vehicle shall have in addition thereto, and equally visible, the words "Farm Vehicle," "Logging Vehicle," "Livestock Vehicle," "Mixer Vehicle," "Equipment Vehicle" or "Special Vehicle."

History: En. Sec. 14, Ch. 219, L. 1951; amd. Sec. 1, Ch. 104, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted the words "truck tractor" for "trailer, semitrailer," "on the driver's side" for "on either side" and inserted the words "or maximum gross weight of the combinations of vehicles"; in the second sentence inserted the words "ready mix concrete, low boy or special fee" and "Mixer Vehicle," "Equipment Vehicle" and "Special Vehicle."

Repealing Clause

Section 2 of Ch. 104, Laws 1957 repealed all acts and parts of acts in conflict therewith.

53-639. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly-owned special mobile equipment. Every person, firm, partnersip, or corporation who owns, leases, or rents special mobile equipment as hereinafter defined, and occasionally moves said equipment on, over, or across the highways of the state of Montana shall not be subject to registration of said equipment nor be required to pay the fees and charges provided for by chapter 219 of the Session Laws of the Thirty-second Legislative Assembly of the state of Montana, 1951 [53-615 to 53-629], as the same is now, or may hereafter be, amended, but prior to any movement on the highways, each piece of such equipment shall display an equipment identification plate attached thereto. Annual application for the identification plate shall be made to the county treasurer prior to or before any such piece of equipment is moved over the highway, on a form furnished by the registrar of motor vehicles, together with the payment of a fee of five dollars ($5.00). The fees collected under this act shall belong to the general road fund of the county and be for the use and benefit of that fund. Provided, that publicly-owned special mobile equipment and equipment and implements of husbandry designed and used exclusively by an owner in the conduct of his own farming operations are exempt from the provisions of this act.

History: En. Sec. 1, Ch. 183, L. 1955.

Title of Act

An act to provide for the payment of fees and issuance of identification plates to persons, firms and corporations moving special mobile equipment occasionally over the highways; providing for the fees for issuance of identification plates; providing for the collection of such fees by the county treasurer; providing for display of identification plates and receipts for same on each piece of equipment; providing for deposit of such funds from identification plates in the general road fund of the county; providing for

exemption of publicly-owned special mobile equipment from said fees; defining special mobile equipment; providing for expiration date of identification plates.

53-640. Issuance of identification plate and receipt—contents. The county treasurer shall issue to each applicant a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment and a brief description of the same.

History: En. Sec. 2, Ch. 183, L. 1955.

53-641. Attaching receipt to equipment—inspection. The receipt shall be carried in a suitable container attached to the equipment or immediately available for inspection of any peace officer or highway patrolman.

History: En. Sec. 3, Ch. 183, L. 1955.

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including road construction equipment or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section; provided, that the term "special mobile equipment" does not include any of the following:

(a) A vehicle such as a truck, truck-tractor, trailer, or semitrailer, originally designed for the transportation of persons or property to which machinery has been attached;

(b) Dump truck and truck-mounted transit mixers, or any rubber-tired truck or trailer, self-propelled, or towed, from which machinery can be removed and such vehicle used to transport persons or property.

History: En. Sec. 4, Ch. 183, L. 1955.

53-643. Expiration date of plate. The identification plate for special mobile equipment shall expire on December thirty-first of each year in which it was issued.

History: En. Sec. 5, Ch. 183, L. 1955.

TITLE 54—NARCOTIC DRUGS

Chapter 1. Uniform drug act—regulation, possession and sale of narcotics, 54-101, 54-103, 54-104, 54-106, 54-109, 54-119, 54-124.

CHAPTER 1—UNIFORM DRUG ACT—REGULATION, POSSESSION AND SALE OF NARCOTICS

Section 54-101. Definitions, words and phrases.
54-103. Manufacturers and wholesalers.
54-104. Qualification for licenses.
54-106. Sales by apothecaries.
54-109. Record to be kept.
54-119. Narcotic drugs to be delivered to state, official, etc.
54-124. Enforcement and cooperation.

54-101. Definitions, words and phrases. The following words and phrases, as used in this act shall have the following meanings, unless the context otherwise requires:

(1) to (7). * * * [Subdivisions (1) to (7), same as parent volume.]

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Montana state board of pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(9) "Laboratory" means a laboratory approved by the Montana state board of pharmacy as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) to (19). * * * [Subdivisions (10) to (19), same as parent volume.]

(20) "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the Montana state board of pharmacy.

(21). * * * [Same as parent volume.]

(22). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 176, L. 1937; amd. Sec. 1, Ch. 146, L. 1941; amd. Sec. 1, Ch. 12, L. 1949; amd. Sec. 1, Ch. 174, L. 1953; amd. Sec. 1, Ch. 7, L. 1955; earlier acts were secs. 3189 to 3193, and secs. 3199 to 3202.6, R. C. M. 1935.

Amendment

The 1955 amendment in subds. (8), (9) and (20) substituted "Montana state board of pharmacy" for "secretary of the state board of health."

Collateral References

Liability of seller or manufacturer of drugs for injuries as affected by buyer's or user's allergy or unusual susceptibility to injury from article. 26 ALR 2d 978.

Entrapment to commit offense with respect to narcotics law. 33 ALR 2d 883.

54-103. Manufacturers and wholesalers. No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Montana state board of pharmacy.

History: En. Sec. 3, Ch. 176, L. 1937; amd. Sec. 2, Ch. 7, L. 1955.

tana state board of pharmacy" for "secretary of the state board of health."

Amendment

The 1955 amendment substituted "Mon-

54-104. Qualification for licenses. No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the Montana state board of pharmacy:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five (5) years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict. The Montana state board of pharmacy may suspend or revoke any license for cause.

History: En. Sec. 4, Ch. 176, L. 1937; amd. Sec. 3, Ch. 7, L. 1955.

tana state board of pharmacy" for "secretary of the state board of health."

Amendment

The 1955 amendment substituted "Mon-

54-106. Sales by apothecaries. (1) An apothecary, in good faith, may dispense and sell narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two (2) years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per cent (20%) of the complete solution to be used for medical purposes.

(4) Whenever any narcotic drug is permitted to be sold without a written order under the federal law and regulations, it shall be deemed a compliance with the subsection if the apothecary dispenses and sells

narcotic drugs upon a prescription given orally by a physician, dentist or veterinarian, if in so doing the federal law and regulations relating to the dispensing and sale of narcotic drugs when prescribed orally are complied with by all parties to the transaction.

History: En. Sec. 6, Ch. 176, L. 1937; amd. Sec. 4, Ch. 7, L. 1955.

Amendment

The 1955 amendment added subd. (4).

54-109. Record to be kept. (1) Physicians, Dentists, Veterinarians, and Other Authorized Persons. Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided: That no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight (48) consecutive hours, (a) four (4) grains of opium, or (b) one-half (½) of a grain of morphine or any of its salts, or (c) two (2) grains of codeine or of any of its salts, or (d) one-fourth (¼) of a grain of heroin or of any of its salts, or (e) one (1) grain of extract of cannabis or one (1) grain of any more potent derivative or preparation of cannabis, or (f) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and Wholesalers. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(3) Apothecaries. Apothecaries shall keep records of all narcotic drugs received and disposed of by them in accordance with the provisions of subsection 5 of this section.

(4) Vendors of Exempted Preparations. Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 54-108, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection 5 of this section.

(5) Form and Preservation of Records. The form of records shall be prescribed by the Montana state board of pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs

produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced; and the proportion of resin contained in or producible from the dried flowering or fruiting tops of the pistillate plant Cannabis Sativa L., from which the resin has not been extracted, received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two (2) years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

History: En. Sec. 9, Ch. 176, L. 1937; amd. Sec. 5, Ch. 7, L. 1955.

Amendment

The 1955 amendment in subd. (5) substituted "Montana State Board of Pharmacy" for "secretary of the state board of health."

54-119. Narcotic drugs to be delivered to state, official, etc. All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the Montana state board of pharmacy, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Montana state board of pharmacy for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this state, not operated for private gain, the Montana state board of pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The Montana state board of pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or may destroy the same.

(d) The Montana state board of pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing

the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws.

History: En. Sec. 19, Ch. 176, L. 1937; amd. Sec. 6, Ch. 7, L. 1955.

Amendment

The 1955 amendment substituted "Montana state board of pharmacy" for "secretary of the state board of health" and in subd. (c) substituted "its" for "his."

54-124. Enforcement and cooperation. It is hereby made the duty of the Montana state board of pharmacy, its officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this act, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs.

History: En. Sec. 24, Ch. 176, L. 1937; amd. Sec. 7, Ch. 7, L. 1955.

Amendment

The 1955 amendment substituted "Montana state board of pharmacy" for "secretary of the state board of health."

Repealing Clause

Section 9 of Ch. 7, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 7, Laws 1955 provided the act should be in effect upon its passage and approval. Approved February 1, 1955.

CHAPTER 2—NARCOTIC EDUCATION SECTION OF THE STATE BOARD OF HEALTH

54-206 to 54-209. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 104, L. 1949), relating to the narcotic education section of the division of public health education in the state board of health, were repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

REVISED CODES OF MONTANA

VOLUME 4

1957 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 4 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 4 THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

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MONTANA REVISED CODES

TITLE 58—OBLIGATIONS

CHAPTER 2—JOINT AND SEVERAL, CONDITIONAL AND ALTERNATE OBLIGATIONS

58-209. (7405) **Performance, etc., of conditions—when essential.**

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Cited or applied in White v. Saby, 127 M 241, 260 P 2d 1116, 1119.

58-212. (7408) **Conditions involving forfeiture—how construed.**

Operation and Effect

Under a lease contract wherein it was agreed that the lessee would not assign the lease without the consent of the lessor, and further that the sale of more than 50% of the stock would be considered an assignment, it was held there was not a violation of the lease where the facts showed that the lessor had consented to the sale of stock in one instance, and further that such stock was then pledged as security for a loan, which security was then surrendered for the payment of the loan. Such surrender was by operation of law and provisions restraining the assignment of a lease includes only voluntary assignments and is not operative against an assignment effected by law. Lipsker v. Billings Boot Shop, — M —, 288 P 2d 660.

TITLE 59—OFFICES AND OFFICERS

Chapter 5. Prohibitions and general provisions applicable to public officers, 59-510, 59-519, 59-537 to 59-542.
7. The fiscal year—official reports, 59-701 to 59-701.2, 59-703, 59-704.
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CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

Section 59-510. Office hours.
59-519. Appointment of relative to office of trust or emolument unlawful.
59-537. Definitions.
59-538. Expenses of persons in state service—per diem allowance.
59-539. Computation of per diem allowance.
59-540. Schedule of expenses—form.
59-541. Schedule of expenses to be filed.
59-542. Existing laws relating to counties and municipalities not changed.

59-510. (453) **Office hours.** Unless otherwise provided by law every officer must keep his office open for the transaction of business continuously from eight o'clock A. M., until five o'clock P. M. each day, except upon Saturdays and holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, excepting the state treasurer, who in his discretion may in the interest of the safekeeping of funds, securities and records under his control, close his office during the period from twelve o'clock noon to one o'clock P. M. every day.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1931; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957. Cal. Pol. C. Sec. 1030.

Amendment

The 1957 amendment in the first sentence substituted "eight o'clock" for "nine o'clock" and "except upon Saturdays and holidays" for "except upon Saturdays when the office hours shall be from nine o'clock a.m. to twelve o'clock noon" and in the second sentence deleted the words "excepting upon holidays" which appeared between the words "requires," and "excepting."

Repealing Clause

Section 2 of Ch. 253, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 253, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 16, 1957.

References

Cited or applied in Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339, 341.

59-519. (456.2) **Appointment of relative to office of trust or emolument unlawful.** It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree, or by affinity within the second degree; except that the provisions of this section shall not apply to sheriffs in the appointment of females as cooks and/or matrons. It shall further be unlawful for any person or any member

of any board, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; amd. Sec. 1, Ch. 94, L. 1955.

Amendment

The 1955 amendment added the exception clause to the first sentence.

Repealing Clause

Section 2 of Ch. 94, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 94, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

59-521 to 59-523. (457 to 459) **Repealed.**

Repeal

These sections (Secs. 1 to 3, p. 102, L. 1897), relating to traveling expenses of state officers, were repealed by Sec. 7, Ch. 66, Laws 1955. For present provisions, see secs. 59-537 to 59-542.

59-524 to 59-529. (459.1 to 459.6) **Repealed.**

Repeal

These sections (Secs. 1 to 6, Ch. 108, L. 1925; amd. Sec. 1, Ch. 40, L. 1933; amd. Sec. 1, Ch. 32, Ex. L. 1933; amd. Sec. 1, Ch. 92, L. 1941; amd. Sec. 1, Ch. 139, L. 1943; amd. Sec. 1, Ch. 17, L. 1949; amd. Sec. 1, Ch. 7, L. 1951; amd. Sec. 1, Ch. 64, L. 1953), relating to expenses of persons in state service, were repealed by Sec. 7, Ch. 66, Laws 1955. For present provisions, see secs. 59-537 to 59-542.

59-537. Definitions. When used in this act:

(a) The term "subsistence" means lodging, meals and other necessary expenses incidental to the personal sustenance or comfort of the traveler, including fees or tips to porters and stewards.

(b) The term "per diem allowance" means a daily flat rate of payment in lieu of actual expenses.

History: En. Sec. 1, Ch. 66, L. 1955.

Title of Act

An act to provide a per diem allowance in lieu of actual expenses for subsistence for persons engaged in traveling under any state department; providing for the computation of such per diem allowance on a quarterly basis; requiring said persons to submit periodic schedules of expenses to the board of examiners; providing for the filing of such schedules of expenses and repealing sections 59-521 to 59-529, inclusive, Revised Codes of Montana, 1947, as amended by chapter 64 of the 1953 legislative assembly.

59-538. Expenses of persons in state service—per diem allowance. Every person engaged in any service in every department of state, inclusive of persons in appointive positions or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, in lieu of the actual expenses for subsistence, a per diem allowance at the rate of seven dollars ($7.00) per

day for such travel within the state of Montana and at the rate of ten dollars ($10.00) per day for such travel outside the state of Montana; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, Revised Codes of Montana, 1947; or section 93-313, Revised Codes of Montana, 1947; provided that nothing herein contained shall be construed as affecting the validity of section 43-310, Revised Codes of Montana, 1947; and provided further that the provisions of this act shall not apply to the elective state public officers of the state of Montana who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed fifteen dollars ($15.00) per day.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957.

Amendment

The 1957 amendment deleted the words "and" and "further" from the second proviso clause and added the "and provided further" clause.

Effective Date

Section 2 of Ch. 207, Laws 1957 provided the act should be in full force and effect immediately upon approval. Approved March 9, 1957.

59-539. Computation of per diem allowance. In computing the per diem in lieu of subsistence for continuous travel of more than twenty-four (24) hours, the calendar day, midnight to midnight, shall be the unit, and for fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one-fourth (¼) of the rate for a calendar day shall be allowed for each period of six (6) hours or fraction thereof. When a change in the per diem rate is made during a day, the rate of per diem in effect at the beginning of the quarter in which the change occurs shall continue to the end of such quarter. For continuous travel of twenty-four (24) hours or less, constituting a travel period, such period shall be regarded as commencing with the beginning of the travel and ending with the completion thereof, and for each six (6) hour portion of the period or fraction thereof one-fourth (¼) of the rate for a calendar day shall be allowed; provided, however, that no per diem, excepting an allowance not to exceed one dollar and twenty-five cents ($1.25) per day for moneys actually expended for mid-day meals, shall be allowed when the departure is at or after 8:00 A. M. and the return on the same day is at or prior to 6:00 P. M. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours.

History: En. Sec. 3, Ch. 66, L. 1955.

59-540. Schedule of expenses—form. Every such person so engaged shall render to the board of examiners periodically, as prescribed by said board, a schedule of expenses and amounts claimed for said period, in a form to be prescribed by said board. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose, and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage and other such items.

History: En. Sec. 4, Ch. 66, L. 1955.

59-541. Schedule of expenses to be filed. Said board of examiners shall keep a separate file for each person engaged in this act contemplated, and file schedules of expenses from each said person therein. Said schedules shall be distinct and separate from other reports and detail that may be required to be made to the departments wherein such persons are respectively employed.

History: En. Sec. 5, Ch. 66, L. 1955.

59-542. Existing laws relating to counties and municipalities not changed. This act shall not be construed to change in any manner the existing laws of the state pertaining to the conduct of any county, city or municipal office.

History: En. Sec. 6, Ch. 66, L. 1955.

Repealing Clause

Section 7 of Ch. 66, Laws 1955 read "Sections 59-521 to 59-529, inclusive, Revised Codes of Montana, 1947, as amended by chapter 64 of the 1953 Legislative Assembly, and all other acts and parts of other acts in conflict herewith are hereby repealed."

CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS

Section 59-701. Fiscal year.
59-701.1. Re-appropriation and re-encumbrance of purchase orders encumbered at end of each fiscal year.
59-701.2. Claims not paid by time fiscal reports closed out are carried over.
59-703. Printing official reports—limitation.
59-704. Distribution of public reports.

59-701. (518) **Fiscal year.** The fiscal year for state purposes commences on the first (1st) day of July of each year, and ends on the last day of June of each year. The fiscal year for county purposes commences on the first (1st) day of July of each year and ends on the last day of June of each year. At the close of each fiscal year each state office, department, bureau, commission, institution, university unit, and agency shall make a determination of its financial condition and the results of its operations for such fiscal year, and the fiscal records of such state office, department, bureau, commission, institution, university unit, or agency for such fiscal year shall be closed out not more than twenty (20) days following the close of each fiscal year, and the trial balances of the accounts of such state office, department, bureau, commission, institution, university unit, and agency shall be transmitted to the state controller so as to be received by him not more than thirty (30) days following the close of each fiscal year.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R. C. M. 1921; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955.

Amendment

The 1955 amendment substituted "twenty (20)" for "thirty (30)" and "thirty (30)" for "forty-five (45)."

59-701.1. Re-appropriation and re-encumbrance of purchase orders encumbered at end of each fiscal year. Accounting control of all purchase orders issued by the state controller which are encumbered at the end of each fiscal year in the state controller's accounts, because of incompletion of the contract, shall be re-appropriated and re-encumbered in the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955.

59-701.2. Claims not paid by time fiscal reports closed out are carried over. Any just claims not paid within the above twenty (20) days shall become payable from the succeeding year's appropriation, providing, however, that such claims shall not exceed the appropriation made for the preceding biennium.

History: En. Sec. 3, Ch. 84, L. 1955.

Repealing Clause

Section 4 of Ch. 84, Laws 1955 repealed all acts and parts of acts in conflict therewith.

59-703. (520) **Printing official reports—limitation.** The head of any state office, board, bureau, commission or department, who under the statutes of the state is required to make an annual or biennial report of his office, board, bureau, commission or department, may make application to the state board of examiners for permission to have such report printed and published, and the said board shall have full power to grant or deny such application.

No report of any state office, board, bureau, commission or department subsequent to the reports for the two year period terminating June 30, 1936, shall be printed and published until the same has been submitted to the state board of examiners and the printing authorized. The said board shall authorize the printing and publication of such reports only when it deems the usefulness of the reports in the administration of the government of the state to justify the expense.

The state board of examiners may in its discretion demand that the annual or biennial report of the head of any office, board, bureau, commission or department shall be printed and published without receiving any request from the officer concerned.

Such reports shall be confined to a factual presentation to the governor and legislature of the activities of the department concerned and shall be 8½ x 11 inches in outside dimension and shall employ single color covers only.

History: En. Sec. 1, p. 94, L. 1899; re-en. Sec. 444, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1921; re-en. Sec. 520, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1933; repealed and new section enacted, Sec. 1, Ch. 33, L. 1937; amd. Sec. 1, Ch. 98, L. 1957.

Amendment

The 1957 amendment added the fourth paragraph.

Repealing Clause

Section 2 of Ch. 98, Laws 1957 repealed all acts or parts of acts in conflict therewith.

59-704. (521) **Distribution of public reports.** The reports shall be distributed by the department responsible for making the report. Such distribution shall be within the discretion of the head of the department making the report, but the following distribution shall be mandatory:

To the governor—as many as he desires, but not less than twenty-five copies of each report.

To the secretary of state—twenty-five copies of each report.

To the librarian of the state historical library—four (4) copies.

To the library of Congress—four (4) copies of each report.

To the legislative assembly of the state of Montana—one (1) copy for each member.

History: Ap. p. Sec. 313, Pol. C. 1895; amd. Sec. 1, Ch. 12, L. 1907; Sec. 445, Rev. C. 1907; re-en. Sec. 521, R. C. M. 1921; amd. Sec. 4, Ch. 46, L. 1937; amd. Sec. 1, Ch. 64, L. 1957.

Amendment

The 1957 amendment completely revised this section. For section prior to amendment see parent volume.

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

Section 59-1101. Declaration of policy.
59-1102. Definitions.
59-1102.1. Referendum and certification.
59-1103. Federal-state agreement.
59-1103.1. Contributions by state employees.
59-1104. Plans for coverage of employees of political subdivisions.
59-1105. Contribution fund.
59-1106. Costs of administration.
59-1107. Rules and regulations.
59-1108. Persons excepted from act.
59-1109. Supplementation of social security benefits.
59-1110. Eligibility of staff and teachers—payroll deductions.
59-1111. For purposes of act, each state institution of higher education deemed to have a separate retirement system—referendum—administration.
59-1112. Social security coverage not to prejudice other rights under other laws.
59-1113. General repeal—purpose.

59-1101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors' insurance system embodied in the social security act, it is hereby declared to be the policy of the legislature, subject to the limitations of this act, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the social security act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955.

Amendment

The 1955 amendment substituted the words "In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana" for the words "In order to extend to employees of political subdivisions of the state"; substituted "the state and its political subdivisions" for "the political subdivisions of the state" and added the second sentence.

Collateral References

48 Am. Jur. 520, Social Security Unemployment Insurance and Retirement Funds, §§ 9 et seq.

59-1102. Definitions. For the purposes of this act—

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any

medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal insurance contributions act, would not constitute "wages" within the meaning of that act;

(b) The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this act would constitute "employment" as defined in the social security act; or, (2) service which under the social security act may not be included in an agreement between the state and the secretary of health, education and welfare entered into under this act. Service performed by civilian employees of national guard units is specifically included within the term "employment." Service which under the social security act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act shall be included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to section 3(b) [59-1102.1(b)] of this act;

(c) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision thereof;

(d) The term "state agency" means the board of administration of the public employees' retirement system of the state of Montana;

(e) The term "secretary of health, education, and welfare" means the secretary of the United States department of health, education, and welfare and includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the social security act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such function;

(f) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision. The term shall include special districts or authorities created by the legislature or local governments such as but not limited to school districts, housing authorities, etc.;

(g) The term "Social Security Act" means the act of Congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended; and

(h) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939

and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954, and as such codes may from time to time be amended.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955.

Amendment

The 1955 amendment substituted "secretary of health, education and welfare" for "federal security administrator" each time it appears and made other changes and additions. For section prior to amendment see parent volume.

Collateral References

Right to unemployment compensation of retired employee receiving pension or the like. 32 ALR 2d 901.

59-1102.1. Referendum and certification. (a) Pursuant to section 218 (d)(6) of the social security act, the public employees' retirement system of the state of Montana shall, for the purposes of this act, be deemed to constitute a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby. With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health, education, and welfare.

History: En. Sec. 3, Ch. 270, L. 1955.

Compiler's Note

Section 3 of Ch. 270, Laws 1955 contained a preliminary clause which read "That chapter 44 of the Session Laws of Montana, 1953, be, and the same is hereby amended by adding thereto a new section providing for an election among members of the public employees' retirement system on the question of coverage under the social security act, said new section to be designated as section 3 and to read as follows:"

Title of Act

An act to amend chapter 44 of the Session Laws of Montana, 1953, relating to the coverage of certain officers and employees of the political subdivisions of the state of Montana under the old age and survivors' insurance provisions of Title II of the Federal Social Security Act, as amended, by extending to employees of the state of Montana and its political subdivisions, including employees who are members of the public employees' retirement system and civilian employees of national guard units, the basic protection accorded to others by the old age

and survivors' insurance system embodied in the social security act; providing for an election among members of the public employees' retirement system on the question of coverage; providing for the payment of contributions by both employees and the state and its political subdivisions; designating the board of administration of the public employees' retirement system as the state agency to administer this act; providing that if any provisions hereof are held invalid the remainder of this act shall not be affected thereby; providing for the repeal of all acts or parts of acts inconsistent with the provisions of this act.

59-1103. Federal-state agreement. (a) The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the secretary of health, education, and welfare, consistent with the terms and provisions of this act, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in section 2 [59-1102] of this act. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required or permitted by or under the social security act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title II of the social security act;

(2) The state will pay to the secretary of the treasury of the United States, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in section 2 [59-1102] of this act), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into, except that a modification entered into after December 31, 1954, and prior to January 1, 1958, may be effective with respect to services performed after December 31, 1954, or after a later date specified in such modification;

(4) All services which constitute employment as defined in section 2 [59-1102] and are performed in the employ of the state by employees of the state, shall be covered by the agreement; and

(5) All services which (A) constitute employment as defined in section 2 [59-1102], (B) are performed in the employ of a political subdivision of the state, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section 6 [59-1104] shall be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; amd. Sec. 4, Ch. 270, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

59-1103.1. Contributions by state employees. (a) Every employee of the state whose services are covered by an agreement entered into under section 4 [59-1103] shall be required to pay for the period of such coverage, into the contribution fund established by section 7 [59-1105], contributions, with respect to wages (as defined in section 2 [59-1102] of this act), equal to the amount of employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: En. Sec. 5, Ch. 270, L. 1955.

Compiler's Note

Section 5 of Ch. 270, Laws 1955 contained a preliminary clause which read "That chapter 44 of the Session Laws of Montana, 1953, be, and the same is hereby amended by adding thereto a new section providing for contributions with respect to wages by state employees, said new section to be designated as section 5 and to read as follows:"

59-1104. Plans for coverage of employees of political subdivisions. (a) Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of title II of the social security act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(1) it is in conformity with the requirements of the social security act and with the agreement entered into under section 4 [59-1103];

(2) it provides that all services which constitute employment as defined in section 2 [59-1102] and are performed in the employ of the political subdivisions by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom section 218(d)(3)(C) of the social security act is applicable;

(3) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports;

(6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the social security act.

(b) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in section 2 [59-1102] of this act), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 3 [59-1102.1].

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 2 [59-1102] of this act), not exceeding the amount of the employee tax which would be imposed by the federal insurance contributions' act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor, or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department, agency or fund of the state.

History: En. Sec. 4, Ch. 44, L. 1953; amd. Sec. 6, Ch. 270, L. 1955.

Amendment

The 1955 amendment in the first sentence of subd. (a) substituted the word

"shall" for the words "is hereby authorized to"; in subd. (a) (2) inserted the words "except that it may exclude services performed by individuals to whom section 218 (d) (3) (C) of the social security act is applicable"; in subd. (a) (5) substituted "secretary of health, education, and welfare" for "federal security administrator"; in subd. (c) (2) inserted the words "the employee" between the words "of" and "tax" and deleted the reference "section 1400 of" which appeared before the words "the federal insurance contributions act" and in subd. (d) raised the interest rate from 4 to 6 per centum.

59-1105. Contribution fund. (a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund: (1) all contributions, interest, and penalties collected under sections 5 and 6 [59-1103.1 and 59-1104]; (2) all moneys appropriated thereto by the legislative assembly of the state of Montana; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this act. Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 4 [59-1103]; (B) payment of refunds provided for in section 5(c) [59-1103.1] of this act; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 3 [59-1102.1] and the social security act.

(d) The treasurer of the state shall be ex-officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution fund.

History: En. Sec. 5, Ch. 44, L. 1953; amd. Sec. 7, Ch. 270, L. 1955.

Amendment

The 1955 amendment in subd. (a) (5) substituted the word "for" for the word

"from"; in subd. (b) inserted the words "refunds provided for in section 5(c) of this act; and (C)" and added subd. (e).

59-1106. Costs of administration. All costs allocable to the administration of this chapter shall be charged to and paid to the general fund by each department of the state and by the participating divisions and instrumentalities and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; amd. Sec. 8, Ch. 270, L. 1955.

Amendment

The 1955 amendment inserted the words "by each department of the state and" and the words "and political subdivisions."

59-1107. Rules and regulations. The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

History: En. Sec. 7, Ch. 44, L. 1953; amd. Sec. 9, Ch. 270, L. 1955.

Amendment

The 1955 amendment made no change in the text of this section.

59-1108. Persons excepted from act. This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firemen, policemen, teachers, or highway patrolmen.

History: En. Sec. 8, Ch. 44, L. 1953; amd. Sec. 10, Ch. 270, L. 1955.

Amendment

The 1955 amendment reworded this section. Prior to amendment it read "This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state, and all employees of the political subdivisions thereof operating under the provisions of the public employees retirement act of the state of Montana, or under any retirement plan for firemen, policemen, teachers, or highway patrolmen."

Separability Clause

Section 11 of Ch. 270, Laws 1955 read "If any provisions of this act, or the application thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby."

Repealing Clause

Section 12 of Ch. 270, Laws 1955 repealed all acts and parts of acts which are inconsistent with the provisions of this act.

Cross-Reference

Application to teachers and staff members in public schools and institutions of higher learning, secs. 59-1109 to 59-1113.

59-1109. Supplementation of social security benefits. Any school district of the state, may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of such board of trustees. If the majority of votes cast in any such referendum indicates that said staff and teachers approve, then such board of trustees shall certify to the state board of equalization (or such other agency as may be by legislation designated to administer such program and enter into agreements for extensions of social security coverage) that the conditions for

coverage by social security, required by section 218 of the social security act have been complied with.

History: En. Sec. 1, Ch. 271, L. 1955.

Title of Act

An act to provide for supplemental social security retirement benefits to teachers and staff members upon approval of district boards of trustees for public schools, and of the state board of education for each state institution of higher education, and referendum votes; providing for separate coverage of each district, and of each institution of higher education, providing for application of the provision of chapter 44, Laws of 1953, where not in conflict herewith.

59-1110. Eligibility of staff and teachers—payroll deductions. Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state board of equalization, or such other agency as may be designated by the legislature to administer social security act coverage in this state, and held in the contributions' fund as provided by chapter 44, Laws of Montana, 1953.

History: En. Sec. 2, Ch. 271, L. 1955.

59-1111. For purposes of act, each state institution of higher education deemed to have a separate retirement system—referendum—administration. (a) For the purposes of this section of this act, there shall be deemed to be a separate retirement system for the teachers of each state institution of higher education in Montana, and each such institution and the teachers therein shall be treated separately and independently from the other such institutions and teachers.

(b) On request of the president of any such institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requisites therefore prescribed by section 218 of the Federal Social Security Act.

(c) If the majority of votes cast in any such referendum indicates that the majority of voters desire it, then the governor shall certify to the federal secretary of health, education, and welfare that each of the conditions set forth in section 218 of the social security act has been complied with in respect to the retirement system voting in that referendum.

(d) Upon such certification the governor shall designate an official to enter into an agreement (or a modification or supplement to an existing agreement, or both such modification and supplement) with the appropriate officers of the federal government, pursuant to section 218 of the said social security act, to secure coverage thereunder for the retirement system with respect to which such certification has been made. Such agreements may be made retroactive to the extent permissible under the social security act.

(e) The fiscal officer for each institution for whose retirement system an agreement has been so made shall collect the contributions required by

said section 218 as follows: (1) from the teachers in the retirement system of that institution, by payroll deductions and (2) for the state from any appropriations for salaries, or otherwise made available, to the institution involved. In the absence of specific provision in the appropriations for, or budget of, such an institution for such contributions, the state board of education shall designate the funds from which any such required contributions shall be made and the budgetary items to which they shall be allocated.

(f) In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to such amended law or such superseding law.

History: En. Sec. 3, Ch. 271, L. 1955.

59-1112. Social security coverage not to prejudice other rights under other laws. Nothing in this act shall be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state; it being the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits, and to permit members of teaching or staff personnel in any district or institution of higher education so electing to become a member of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one such system, and no benefits received under either system shall be deducted from any other or separate system.

History: En. Sec. 4, Ch. 271, L. 1955.

59-1113. General repeal—purpose. All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this act to bring under the provisions of chapter 44, Montana Session Laws of 1953, or any act amendatory thereof, teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the Federal Social Security Act.

History: En. Sec. 5, Ch. 271, L. 1955.

Separability Clause

Section 6 of Ch. 271, Laws 1955 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby."

TITLE 60—OIL AND GAS

Chapter 1. Conservation of oil and gas—commission, 60-125, 60-144 to 60-148.
2. Petroleum products—standards—regulation of manufacture and distribution, 60-201, 60-202.
7. Lease of land of local governmental units for development of oil and gas, 60-704.
8. Underground gas storage reservoirs, 60-801 to 60-805.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

Section 60-125. Oil and gas conservation commission—members—term—oath—seal—employees.
60-144. Owners shall make available to commission cores and cuttings.
60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation fund.
60-146. Definitions.
60-147. Transfer of jurisdiction and record.
60-148. Availability of facilities to bureau.

60-125. Oil and gas conservation commission—members—term—oath—seal—employees. A. There is hereby created the oil and gas conservation commission of the state of Montana.

B. The oil and gas conservation commission of the state of Montana shall be composed of five (5) persons to be appointed by the governor, with the concurrence of the state senate. That of the commissioners, two (2) and not more than two (2) will be appointed for a period of two (2) years, and they shall be from industry. One (1) nonindustry man shall be appointed for three (3) years and one for four (4) years and one (1) for five (5) years. At the expiration of the term of the two (2) industry men, the appointment of their successors shall be for four (4) and five (5) years respectively, after which all vacancies shall be filled for five (5) year terms. All appointed members of the commission shall be subject to removal by the governor for cause at any time. In case of a vacancy in the office of a member of the commission, an appointment shall be made to fill such vacancy in the manner prescribed by the Constitution of the state of Montana.

C. Persons appointed as members of the commission shall have been bona fide residents of the state of Montana for at least one (1) year before such appointment, and the two (2) industry members, shall have had at least three (3) years' experience in the production of oil or gas.

D. Each member appointed to the commission and each person appointed to office by the said commission before entering upon the duties of his office shall take and subscribe to the oath specified in section 1, Article 19, of the Constitution of the state of Montana and such oaths shall be filed in the office of the secretary of state.

E. The commission shall have a seal with the words engraved thereon: "Oil and Gas Conservation Commission of Montana," and such seal shall be affixed to all writs, authentication of records or other official proceedings of the commission. The courts of this state take judicial notice of such seal.

F. The commission shall appoint an executive secretary and may employ such other persons as experts, geologists, petroleum engineers, attorneys, assistants, field supervisors, clerks and stenographers and may acquire such personal property as may be necessary to perform the duties that may be required of it, and fix the compensation of the executive secretary and employees. Each member of the commission shall receive, as compensation for his services, the sum of fifteen dollars ($15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with transportation and per diem expenses as provided by law in the discharge of said duties; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of section 60-145, plus any amount appropriated for that purpose, or otherwise accruing to said fund.

History: En. Sec. 2, Ch. 238, L. 1953; amd. Sec. 1, Ch. 11, L. 1955.

Amendment

The 1955 amendment in subd. F substituted the words "Each member of the commission shall receive, as compensation for his services, the sum of fifteen dollars ($15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with transportation and per diem expenses as provided by law in the discharge of said duties" for the words "The members of the commission shall be allowed their transportation and per diem expenses as provided by law incurred in the discharge of their duties."

Repealing Clause

Section 2 of Ch. 11, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 11, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 5, 1955.

60-144. Owners shall make available to commission cores and cuttings. Any owner drilling a well for gas or oil shall make available at the well to the commission cores, when available, and the cuttings from such well if and when required by regulation or order of the commission, and the commission shall cause such cores and cuttings to be delivered to the bureau of mines and geology of the state of Montana as the bureau may from time to time request; providing, however, that cores or cuttings from exploratory or wildcat wells need not be made so [so made] available for a period of six (6) months following completion or abandonment of such wells. The owner of any stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the commission's rules and regulations, shall within six (6) months from the date of the cessation of the drilling of such well, make available to the bureau of mines and geology of the state of Montana at the well, complete sets of sample cuttings and representative cores or chips and well logs of such wells, which logs shall include among other information the size of casing used and the type and depth of water if any located, and such cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the said bureau until such time as requested by the commission; provided that the commission may not request such logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the

date of their impounding by the bureau of mines and geology of the state of Montana has elapsed unless the owner of such stratigraphic test well consents to their use by the commission prior to the expiration of the three (3) year period. The bureau of mines and geology of the state of Montana, during the period of impoundment for any cores, cuttings, chips and logs from any stratigraphic test well, shall not give the commission or any person access to said cores, chips, cuttings or logs, and shall not disclose any information relating thereto or derived therefrom. The commission shall require, and the owner of any stratigraphic test well shall furnish, prior to the commencement of drilling of such well, a good and sufficient surety bond, to be approved prior to the commencement of such drilling, conditioned upon the proper plugging of such well prior to abandonment, the amount of the said bond to be determined by the estimated depth as in the commission's rules and regulations provided for oil and gas wells, and, prior to abandonment, such wells shall be plugged by the owner thereof, or by the surety should the said owner be in default, such plugging to conform to the standards set down and determined by the commission. The provisions of this section shall not apply to core holes or tests less than 1000 feet in depth drilled primarily for structural information.

History: En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955.

Compiler's Note

The bracketed words "so made" were inserted by the compiler.

Amendment

The 1955 amendment added to this section all that portion following the first sentence.

Repealing Clause

Section 2 of Ch. 224, Laws 1955 repealed all acts and parts of acts in conflict therewith.

60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation fund. A. For the purpose of providing funds for defraying the expenses of the operation and enforcement of this act, and the expenses of said commission, the operators and producers of oil and gas shall be required to pay, and they will pay, the following schedule of assessments on each and every barrel of crude petroleum originally produced, saved and marketed or stored within the state of Montana, or exported from the state of Montana, to-wit: (1) On leases on which wells are producing an average of twenty-five (25) barrels per day, or less, one-fourth of one cent (¼¢) per barrel; (2) On leases on which wells are producing an average of more than twenty-five (25) barrels per day, one-half of one cent (½¢) per barrel; (3) And, on wells producing, saving and marketing, storing, or exporting natural gas, said operators and producers shall pay one (1) mill per ten thousand (10,000) cubic feet. Such payments shall be made during the time said commission is in existence. Producers thereof shall make such payment on each and every barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders and shall be reimbursed for such payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude pe-

troleum or natural gas produced for others as provided for in section 84-5409, Revised Codes of Montana, 1947.

For the purposes of this section, a "lease" shall mean that particularly described tract of land contained in a contract in writing, under seal, whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one particular unit agreement shall be considered as one lease relative to payments to be made under this section.

In addition to the above-mentioned privilege and license tax, any person, before commencing the drilling of any oil or gas well, shall secure from the commission a drilling permit and shall pay to the commission therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars ($25.00); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars ($75.00); seven thousand (7,000) feet and deeper, one hundred fifty dollars ($150.00).

B. Each producer of crude petroleum in the state of Montana shall, not later than the last day of each of the calendar months of January, April, July and October, of each and every calendar year, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the commission, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding three (3) calendar months, and containing such other information as the commission may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in subsection A. of this section, above, for the period covered by such statement. Each producer of natural gas in the state of Montana shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in said subsection A. of this section, above, at such times and for such periods as may be prescribed by regulation of the commission. Any producer carrying on business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

C. Any such assessment not paid within the time herein specified shall be delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the commission it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

D. All money collected under the provisions of this act shall be deposited in a special fund to be known as the "Oil and Gas Conservation Fund" by the state treasurer of the state of Montana, and the fund to be raised shall be used for the purpose of paying all expenses of said commission and for no other purpose; all monies from this fund shall be used

by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any balance remaining in said fund shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved by the board of examiners, and paid by the state treasurer upon warrants drawn by the state auditor out of the oil and gas conservation fund.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose, or otherwise accruing to said fund. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957.

Amendments

The 1955 amendment in the first sentence of subd. A inserted the words "or the purchasers from said operators or producers, as the commission may within its discretion direct, said operators and producers, or purchasers," and the provided clause; in the third sentence inserted the words "producers, operators, or purchasers shall make such payment on" and in subd. B inserted the words "he, or the purchaser of the natural gas produced by him" in the second sentence.

The 1957 amendment deleted all changes made by the 1955 amendment and further amended this section as follows: In subd. A inserted the words "and they will pay" appearing after the words "to pay" in the first sentence, inserted the numbers (1), (2) and (3) in the schedule of assessments, inserted the words "per barrel" at the end of (1) and (2) and added the second paragraph; in subd. B deleted the words "beginning with the month of July of the year one thousand nine hundred and fifty-three (1953)," which appeared between the words "year" and "render"; in subd. E inserted the word "deemed" in the phrase "as may be deemed necessary" added to the end of this subd. the words "as is elsewhere provided in this act" and substituted the words "subsection A of this section, above," for "section 22A" each time they appear in subds. B and E.

Repealing Clauses

Section 2 of Ch. 234, Laws 1955 and Sec. 2 of Ch. 198, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 198, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

60-146. Definitions. In this act the expression:

(a) "Bureau" shall mean the bureau of mines and geology of the state of Montana school of mines;

(b) "Commission" shall mean the oil and gas conservation commission of the state of Montana;

(c) "Station" shall mean the petroleum field station located in the city of Billings, county of Yellowstone, state of Montana, including all real and personal property used in connection with the operation of said station, and buildings and structures upon such real property.

History: En. Sec. 1, Ch. 32, L. 1957.

Title of Act

An act relating to the transfer of jurisdiction, control, supervision, custody, property and records of petroleum field station, located in Billings, Yellowstone county, Montana, from bureau of mines and geology of the state of Montana school of mines to the oil and gas conservation commission of the state of Montana; providing for the physical transfer of all

property used in connection with the operation of said station; providing for availability of same to bureau of mines and geology after transfer; providing effective date of transfer; repealing all acts and parts of acts in conflict herewith.

60-147. Transfer of jurisdiction and record. On or before the effective date, as hereinafter provided, all jurisdiction, control, supervision, custody, property and records of the said station shall be and become transferred from the jurisdiction of the bureau to the commission, and the said commission shall, after the effective date hereinafter provided, assume the said jurisdiction, control, supervision and custody of all property, real and personal, and records located at or pertaining to the said station; that the property so transferred shall be and become the property of the commission; that the operation and maintenance of the said station shall be done and performed by the commission from and after the said effective date hereinafter provided, and the necessary expenditures therefor shall be paid from the oil and gas conservation commission fund, upon proper vouchers, by the state treasurer; that the said transfer of property, real, personal, or mixed, and the records from the bureau to the commission shall be made without lien, encumbrance, or obligation of any sort, upon said property and records, and it is the express intention hereby to transfer said property and records to the commission free and clear.

History: En. Sec. 2, Ch. 32, L. 1957.

60-148. Availability of facilities to bureau. The commission is, by this act, authorized to make available to the authorized personnel or representatives of the bureau such facilities, equipment, records, and cores and cuttings, or samples of cores and cuttings, as are, or may be, required by the bureau in the furtherance of its oil and gas research and study.

History: En. Sec. 3, Ch. 32, L. 1957.

Repealing Clause

Section 5 of Ch. 32, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 32, Laws 1957 read "The effective date of the transfer as hereinbefore described, provided and directed, shall be July 1, 1957."

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION

Section 60-201. Petroleum products dealer's license.
60-202. License fees.

60-201. (3913.1) Petroleum products dealer's license. All persons, firms, copartnerships, corporations, trusts or agencies engaged, directly or indirectly, in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any gasoline, kerosene, distillate, road oil, fuel oil, or any oil or gas or oil and gas product, lubricating oil and greases, for use in motor vehicles or in internal combustion engines, shall make application to the state sealer of weights and measures of Montana, upon such blank forms as may be provided by said state sealer of weights and measures for the right to do business in the state of Montana and the making of such application shall be a condition precedent to the right of any such person, firm, copartnership, corporation, trust or agency to transact any such business within the state of Montana and upon the

making and filing of such application and the payment of the proper fee, a license which shall be nontransferable shall issue to the applicant.

Such persons, firms, copartnerships, corporations, trusts or agencies are hereinafter, for brevity, designated dealers, and the term "dealers" whenever used herein, shall include all persons, firms, copartnerships, corporations, trusts or agencies described in this section.

History: En. Sec. 1, Ch. 109, L. 1927; amd. Sec. 2, Ch. 131, L. 1955; amd. Sec. 1, Ch. 96, L. 1957.

Compiler's Note

Section 1 of Ch. 131, Laws 1955 is compiled as section 90-129.

Amendments

The 1955 amendment substituted "state sealer of weights and measures" for "public service commission" and "commission" respectively in the first paragraph.

The 1957 amendment inserted the words "which shall be nontransferable" near the end of the first paragraph.

60-202. (3913.2) **License fees.** That effective on and after the first day of January, 1956, each retail dealer shall pay a license fee of two dollars ($2.00) for each separate place of business which shall include one retail gasoline, diesel or fuel oil measuring device. Two dollars ($2.00) for each additional gasoline, diesel or fuel oil measuring device in excess of one used at such place of business.

For vehicle tank meters and bulk petroleum meters of two and one-half (2½) inch and under, six dollars ($6.00). All two and one-half (2½) inch and under meters for more than one fluid, ten dollars ($10.00). Bulk petroleum meters over two and one-half (2½) inch, ten dollars ($10.00). All meters over two and one-half (2½) inch for more than one fluid, fifteen dollars ($15.00).

All vehicle tanks used for distribution of petroleum products without meters up to and including two hundred (200) gallons, eight dollars ($8.00). All vehicle tanks without meters over two hundred (200) gallons and including three hundred (300) gallons, ten dollars ($10.00). All vehicle tanks without meters over three hundred (300) gallons and including five hundred (500) gallons, twelve dollars ($12.00). All vehicle tanks without meters over five hundred (500) gallons and including one thousand (1000) gallons, sixteen dollars ($16.00). All vehicle tanks without meters over one thousand (1000) gallons and including two thousand (2000) gallons, twenty dollars ($20.00).

It is unlawful to make hose delivery from vehicle tanks unless the tanks have been calibrated by the division of weights and measures. Part of a compartment delivery can only be made by a certified meter or an approved can. Gauge stick measurement will not be permitted. All tank markers will require suitable provision for sealing in a definite position, approved by the division of weights and measures. The sealer of weights and measures shall by proper regulation, fix fees for retesting measuring devices and all tanks used for the distribution of petroleum products or any special service rendered.

All licenses shall be annual and expire December thirty-first.

All license fees, under this act, that are not paid before July first of each year, where measuring device is in use, there will be an added charge of fifty per cent (50%) and if the fee is not paid the equipment will be sealed and removed, by the sealer of weights and measures or his deputies,

from service until such fee has been paid. Anyone found using a device or removing the seal before all license fees have been paid shall, upon conviction, be deemed guilty of a misdemeanor and subject to a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00).

History: En. Sec. 2, Ch. 109, L. 1927; amd. Sec. 3, Ch. 131, L. 1955; amd. Sec. 2, Ch. 96, L. 1957.

Amendments

The 1955 amendment completely rewrote this section. Before amendment it read "Each dealer shall pay a license fee of one dollar for each separate place of business where such dealer transacts business, and one dollar additional for each gasoline pump or vending machine in excess of one used at such place of business. All licenses shall be annual and expire December thirty-first. Each refinery doing business in the state of Montana shall pay an annual license fee of one dollar."

The 1957 amendment substituted the words "measuring device" for "pump" both times they appear in the first paragraph; added the fourth paragraph and in the sixth paragraph substituted "fifty per cent (50%)" for "twenty-five per cent (25%)" and inserted the words "by the sealer of weights and measures or his deputies."

Repealing Clause

Section 3 of Ch. 96, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Repealing Clause and Saving Clause

Section 4 of Ch. 131, Laws 1955 read "All acts or parts of acts in conflict herewith are hereby repealed except that the present schedule of license fees shall remain in effect until January 1, 1956."

CHAPTER 7—LEASE OF LAND OF LOCAL GOVERNMENTAL UNITS FOR DEVELOPMENT OF OIL AND GAS

Section 60-704. Tax deed lands of county—leases of reserved or excepted interest—validating existing leases.

60-704. Tax deed lands of county—leases of reserved or excepted interest—validating existing leases. When in any deed or contract for sale a county has reserved or excepted an interest in oil and gas in and under any land acquired by tax deed, the board of county commissioners may lease such interest for oil and gas development purposes upon the same terms and conditions as are provided for the leasing of lands which have been acquired by tax deed, offered for sale and not sold, or may ratify, confirm and adopt any then existing mineral or oil and gas lease insofar as it describes such land. All such leases, ratifications, confirmations and adoptions heretofore executed by the board of county commissioners are declared to be valid and are ratified, approved and confirmed.

History: En. Sec. 1, Ch. 155, L. 1957.

Title of Act

An act authorizing counties to lease for oil and gas development purposes interests in oil and gas reserved or excepted by the counties in deeds or contracts covering lands acquired by tax deed, or to ratify, confirm and adopt existing leases of such land; validating such leases, ratifications, confirmations and adoptions heretofore executed; and providing that this act shall be in force and effect upon passage and approval.

Effective Date

Section 2 of Ch. 155, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 8—UNDERGROUND GAS STORAGE RESERVOIRS

Section 60-801. Definitions.
60-802. Underground storage.
60-803. Eminent domain—use and limitations.
60-804. Certificate of commission—publication.
60-805. Proceedings.

60-801. Definitions. As used in this act (a) "underground reservoir" shall mean any subsurface sand, stratum or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom; (b) "natural gas" shall mean gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel; (c) "native gas" shall mean gas which has not been previously withdrawn from the earth; (d) "natural gas public utility" shall mean any person, firm or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within or through this state for ultimate public use; (e) "commission" shall mean the oil and gas conservation commission of the state of Montana; (f) "underground storage" shall mean the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir.

History: En. Sec. 1, Ch. 259, L. 1955.

Title of Act

An act relating to and providing for the acquisition by a natural gas public utility through the exercise of the right of eminent domain of sands, strata and formations in land for use as underground gas storage reservoirs and other property for use in connection therewith, and to amend sections 93-9902, 93-9903, 93-9908 and 93-9911 of the Revised Codes of Montana of 1947, as amended by the Session Laws of Montana, 1953, chapter 245, sections 1, 2, 3 and 4, respectively, and to amend section 93-9909 of the Revised Codes of Montana of 1947, all relating to the right of eminent domain, and repealing all acts and parts of acts in conflict herewith.

60-802. Underground storage. The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial and industrial consumers of this state, or which provides a better year-round market to the various gas fields, serves the public interest and welfare of this state.

Therefore, in the manner hereinafter provided the commission and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

History: En. Sec. 2, Ch. 259, L. 1955.

60-803. Eminent domain—use and limitations. Any natural gas public utility may acquire through the exercise of the right of eminent domain as hereinafter provided for its use for the underground storage of natural gas any underground reservoir which the commission shall have found to be suitable and in the public interest for the underground storage of natural gas, and in connection therewith may acquire such other interests in property as may be required adequately to maintain and operate such underground reservoir facilities; provided, however, that the acquisition by the exercise of the right of eminent domain of underground reservoirs granted hereby, shall be limited as follows:

(a) No sand, formation, or stratum which is producing or has produced, or which is capable of producing oil, shall be subject to appropriation hereunder.

(b) No gas bearing sand, formation, or stratum shall be subject to

appropriation hereunder, unless the recoverable volumes of native gas therein have all been produced or unless such sand, formation or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas, or for the conservation of natural gas, than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein, provided that no gas, sand, formation or stratum shall be acquired under the terms of this act when the gas in the underground reservoir is being used for the secondary recovery of oil unless gas in necessary and required amounts is furnished to the operator or operators of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to it or them at the time of acquisition of the gas being used in such secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from such sand, formation or stratum at the time of its acquisition, if such operator was or such operators were at such time entitled to the whole thereof, or if it was or they were at such time entitled to less than the whole thereof, then not to exceed the quantity thereof to which such operator was or operators were then entitled.

(c) Only such area of such underground sand, formation or stratum as may reasonably be expected to be penetrated by gas displaced or injected into such underground gas storage reservoir may be appropriated hereunder.

(d) No rights or interests in existing underground gas reservoirs, being used for the injection, storage or withdrawal of natural gas, owned or operated by a natural gas public utility as defined in this act other than the natural gas public utility seeking to acquire the same, shall be subject to appropriation hereunder.

The exercise of the right of eminent domain hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in such manner as shall comply with orders, rules and regulations of the commission issued for the purpose of protecting underground reservoir against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with such regulations or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

History: En. Sec. 3, Ch. 259, L. 1955.

60-804. Certificate of commission—publication. Any natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the commission a certificate setting out findings of said commission (a) that the underground sand, stratum or formation sought to

be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest; (b) the amount of native gas, if any, remaining therein and the portion thereof recoverable; (c) and that the applicant has in good faith sought to acquire the rights sought hereunder; provided, that the commission shall issue no such certificate until after public hearing is had on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state of Montana for service of process in a civil action as set forth in Chapter 30, Title 93, Revised Codes of Montana of 1947, as amended, and the executive secretary of the commission shall for such purposes be vested with the same powers and charged with the same duties as the clerk of the district court has under said chapter.

History: En. Sec. 4, Ch. 259, L. 1955.

60-805. Proceedings. Any natural gas public utility having first obtained a certificate from the commission as hereinbefore provided, desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner hereinafter provided. Such natural gas public utility shall present to the district court of the county wherein the land is situated, or to the judge thereof a complaint setting forth the purpose for which the said property is sought to be acquired, a description of the property sought to be appropriated and the names of the owners thereof as shown by the records of such county. The plaintiff shall file the certificate of the commission as a part of its complaint and no order by the court granting said complaint shall be entered without such certificate being filed therewith, and subsequent proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, sections 93-9901, et seq. Revised Codes of Montana of 1947, as amended.

History: En. Sec. 5, Ch. 259, L. 1955. amended sections 93-9902, 93-9903, 93-9908, 93-9909 and 93-9911, respectively.

Compiler's Note

Sections 6 to 10 of Ch. 259, Laws 1955

TITLE 61—PARENT AND CHILD

Chapter 1. Parent and child—children by birth and by adoption, 61-112.1, 61-112.2, 61-130.
2. Adoption, 61-201 to 61-217.

CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

Section 61-112.1. Destruction of property by person under 18—liability of parents for.
61-112.2. Limitation on amount of recovery.
61-130. Consent of child's parents—when required—when not required—court process.

61-105. (5834) Custody of legitimate child.

References

Cited or applied in Application of Enke, — M —, 287 P 2d 19, 23.

61-106. (5835) Custody of children where husband and wife living, etc.

References

Cited or applied in Application of Enke, — M —, 287 P 2d 19, 23.

61-112.1. Destruction of property by person under 18—liability of parents for. Any municipal corporation, county, city, town, school district or department of the state of Montana, or any person, or any religious organization whether incorporated or unincorporated, shall be entitled to recover damages in a civil action in an amount not to exceed three hundred dollars ($300.00) in a court of competent jurisdiction from the parents of any person under the age of eighteen (18) years, living with the parents, who shall maliciously or wilfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district or department of the state of Montana, or person or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957.

Title of Act

An act authorizing the recovery of civil damages due to the malicious or wilful destruction of property of municipal corporations, counties, cities, towns, school districts, departments of the state of Montana, or any person, religious organizations, by any person under the age of eighteen (18) years; providing for a limit of such damages of three hundred dollars ($300.00) from parents, and court costs; providing for a repealing clause.

61-112.2. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed three hundred dollars ($300.00) in addition to taxable court costs.

History: En. Sec. 2, Ch. 195, L. 1957.

Repealing Clause

Section 3 of Ch. 195, Laws 1957 repealed all acts and parts of acts in conflict therewith.

61-121. (5850) Right of parent to determine the residence of child.

Operation and Effect

Minor children whose parents are divorced take the domicil of the parent to whose custody they have been legally

given. Application of Enke, — M —, 287 P 2d 19, 22.

Oregon court had jurisdiction to award custody of children where both parties in a divorce action were before the court although the father then left the state with the children before the decree was rendered. The mother who was awarded the custody of the children had the right to fix their residence and their residence could not be changed except by the mother. Application of Butts, — M —, 289 P 2d 949.

61-127 to 61-129.

Compiler's Note

These sections were among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of these sections in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

61-130. (5859) **Consent of child's parents—when required—when not required—court process.** (1) A legitimate minor child cannot be adopted without the consent of both of its parents, if such parents be living;

(2) An illegitimate minor child cannot be adopted without the consent of its mother, if such mother be living; except that consent by the parents of a legitimate minor child, or consent by the mother of an illegitimate minor child shall not, in either case, be necessary, from a father or mother,

(a) deprived of civil rights by a court of competent jurisdiction; or,

(b) adjudged guilty by a court of competent jurisdiction of the crime of adultery; or,

(c) adjudged guilty by a court of competent jurisdiction of physical cruelty or habitual mental cruelty, toward said child; or,

(d) divorced by decree of a court of competent jurisdiction for adultery; or,

(e) adjudged to be an habitual drunkard; or,

(f) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,

(g) who has, in the state of Montana, or in any other state of the United States, wilfully abandoned such child; or,

(h) who has caused the child to be maintained by any public orphans' home, asylum, charitable home or charitable agency or any licensed adoption agency, or the state department of public welfare of the state of Montana for a period of one (1) year without contributing to the support of said child during said period.

(3) When any child who is an orphan (i.e., a child who has lost both father and mother), or a half-orphan (i.e., a child who has lost either father or mother), or who is an illegitimate child, has been kept and maintained in or at any public orphans' home, asylum, charitable home or charitable agency, or by the state department of public welfare in this state for a period of one (1) year or more, such orphan, half-orphan, or illegitimate child may be adopted with the consent of a licensed adoption agency as such an agency is defined by law, or with the consent of the state department of public welfare, or with the consent of the Montana state orphans' home, without the consent of a living parent, if any, unless such living parent has paid toward the expense of maintenance of such half-orphan or illegitimate child at least sixty percentum (60%) of the legitimate cost of keeping and maintaining said child during said period of one (1) year or more if able to do so.

(4) Whenever any child has been left by its parents in any public orphans' home, or asylum, or a children's home, or with any licensed adoption agency or foster home, for a period of more than one (1) year, and the parents of such child, if living, are not residents of the state of Montana, or the surviving parent, if living, is not a resident of the state of Montana, the consent of such parents or parent is not necessary to its adoption irrespective of whether such parents or parent have contributed to the support of the child during said period and, in all such cases, the state department of public welfare, or the Montana state orphans' home, or any licensed adoption agency, is authorized to give such consent as is in this chapter required, and such consent shall be given in the same manner that parents are authorized by law to consent to the adoption of children.

(5) (a) Whenever the adoption of a child, whether legitimate or illegitimate, is sought in any petition for adoption, and the case is one in which the consent of the parent is not required, the court shall, nevertheless, upon the filing of such petition, cause notice of said petition, and service of process for the attendance of said parent or parents at the hearing on said petition to be made on the parent or parents of the child in the following manner: The court shall order a citation to issue to the parent or parents in the name of the state of Montana, and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why said petition should not be granted; except no citation shall be required in any case where the parent or parents have been deprived of the custody of their child or children by the judgment of a court of competent jurisdiction in a proceeding to have such child or children declared neglected or dependent children under the provisions of sections 10-501 to 10-519. Such citation together with a copy of the petition for adoption shall be personally served upon such parent or parents.

(b) If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by section 93-3014. If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from the judgment in civil actions.

History: Ap. p. Sec. 4, 5th Div. Comp. Stat. 1887; amd. Sec. 313, Civ. C. 1895; amd. Sec. 1, p. 229, L. 1897; re-en. Sec. 3764, Rev. C. 1907; re-en. Sec. 5859, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1941; amd. Sec. 1, Ch. 51, L. 1947; amd. Sec. 1, Ch. 181, L. 1949; amd. Sec. 1, Ch. 208, L. 1955. Cal. Civ. C. Sec. 224. Based on Field Civ. C. Sec. 110.

Compiler's Note

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Effective Date

Section 2 of Ch. 208, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

61-131 to 61-133.

Compiler's Note

These sections were among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of these sections in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

61-134. (5863) Effect of adoption.

Compiler's Note

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

61-135. (5864) Effect on former relations of child.

Compiler's Note

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

Right of Adopted Child to Inherit from Natural Parents

There is nothing in this section or in section 61-134, or in any other section of the laws of Montana that says that, upon adoption, the lawfully begotten bodily issue of a person ceases to be the heir of its natural parent. In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

The adoption of a child does not destroy his status as one of the issue of his natural ancestors nor does an adopted child lose his right to inherit from his natural parent. In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

61-136, 61-137.

Compiler's Note

These sections were among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

61-140.

Compiler's Note

This section was among those mentioned as repealed in the title of chapter 240, Laws 1957 which enacted a new adoption law. However, there was no specific repeal of this section in the body of the act. Chapter 240 is compiled as 61-201 to 61-217. The title of act is set out as a note under 61-201.

CHAPTER 2—ADOPTION

Section 61-201. Definitions.
61-202. Who may be adopted.
61-203. Who may adopt.
61-204. Venue.
61-205. Persons required to consent to the adoption.
61-206. Withdrawal of consent.
61-207. Consent of the child.
61-208. Petition for adoption.
61-209. Investigation.
61-210. Summary decree.
61-211. Interlocutory and final decree.
61-212. Effect of final decree.
61-213. Confidential nature of record and proceedings.
61-214. Appeal.
61-215. Foreign adoption decrees.
61-216. Uniformity of interpretation.
61-217. Short title.

61-201. Definitions. As used in this act, unless the context otherwise requires, "child" means any minor person, and "agency" means any person, authority or agency legally empowered to place children for adoption. Singular words may extend and be applied to several persons or things, as well as to one person or thing. Plural words may extend and be applied to one person or thing, as well as to several persons or things.

History: En. Sec. 1, Ch. 240, L. 1957.

NOTE.—Uniform State Law. Sections 61-201 through 61-217 constitute the significant sections of the "Uniform Adoption Act" approved by the National Conference of Commissioners on Uniform State Laws in 1953.

Title of Act

An act to make uniform the law relating to the adoption of children; repealing sections 61-127 to 61-137, both inclusive, of the Revised Codes of Montana, 1947, and repealing section 61-140, of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

61-202. Who may be adopted. Any child present within this state at the time the petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted.

History: En. Sec. 2, Ch. 240, L. 1957.

61-203. Who may adopt. The following persons are eligible to adopt a child:

(1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.

(2) An unmarried person who is at least 21 years old.

(3) A married person at least 21 years old who is legally separated from the other spouse.

(4) In the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957.

61-204. Venue. Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

History: En. Sec. 4, Ch. 240, L. 1957.

61-205. Persons required to consent to the adoption. An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(1) Both parents, if living, or the surviving parent, of a legitimate child; provided, that consent shall not be required from a father or mother,

(a) deprived of civil rights by a court of competent jurisdiction; or,

(b) adjudged guilty by a court of competent jurisdiction of the crime of adultery; or,

(c) adjudged guilty by a court of competent jurisdiction of physical cruelty or habitual mental cruelty, toward said child; or,

(d) divorced by decree of a court of competent jurisdiction for adultery; or,

(e) adjudged to be an habitual drunkard; or,

(f) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,

(g) who has, in the state of Montana, or in any other state of the United States, wilfully abandoned such child; or,

(h) who has caused the child to be maintained by any public orphans' home, asylum, charitable home or charitable agency or any licensed adoption agency, or the state department of public welfare of the state

of Montana for a period of one (1) year without contributing to the support of said child during said period; or,

(2) The mother alone, if the child is illegitimate; or,

(3) The legal guardian of the person of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,

(4) The executive head of an agency if both parents are dead or if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or,

(5) Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of public welfare or of an agency, or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957.

61-206. Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder, shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

History: En. Sec. 6, Ch. 240, L. 1957.

61-207. Consent of the child. Consent of the child if twelve years of age or over, shall be required. Such consent shall be given in court, or be in writing, in such form as the court shall direct.

History: En. Sec. 7, Ch. 240, L. 1957.

61-208. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) The full names, ages and place of residence of the petitioners, and, if married, the place and date of the marriage.

(b) When the petitioners acquired or intend to acquire custody of the child and from what person or agency.

(c) The date and place of birth of child, if known.

(d) The name used for the child in the proceeding, and if a change in name is desired, the new name.

(e) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(f) A full description and statement of value of all property owned or possessed by the child.

(g) Facts, if any, which excuse consent on the part of a parent, to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the state department of public welfare and to any agency participating in the adoption proceeding.

(3) Any written consent required by this act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court.

History: En. Sec. 8, Ch. 240, L. 1957.

61-209. Investigation. (1) Upon the filing of a petition for adoption the court may in its discretion order an investigation to be made by the state department of public welfare or any other private agency licensed and approved for such investigatory purposed by the state department of public welfare, and may in its discretion further order that a report of such investigation shall be filed with the court by the designated investigator within the time fixed by the court and in no event more than thirty (30) days from the issuance of the order for investigation, unless time therefor is extended by the court. Such investigation if ordered by the court shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) of this section located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of such investigation shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor.

History: En. Sec. 9, Ch. 240, L. 1957.

61-210. Summary decree. If the child is related by blood to one of the petitioners, or is a stepchild of the petitioner, or the court finds that the best interests of the child will be furthered thereby, the court, after examination of the report required in section 9 [61-209], in its discretion may waive the entry of an interlocutory decree and the waiting period of six (6) months provided in section 11 [61-211] and grant a final decree of adoption if satisfied that the adoption is for the best interests of the child.

History: En. Sec. 10, Ch. 240, L. 1957.

61-211. Interlocutory and final decree. Upon examination of the report described in section 9 [61-209] and after hearing, the court may issue an interlocutory decree giving the care and custody of the child to the petitioners, pending the further order of the court. Thereafter the investigator shall observe the child in his adoptive home and report in writing to the court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the interlocutory decree the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for

final hearing. Notice of the time and date of the hearing shall be served on the state department of public welfare and the investigator. The investigator shall file with the court a written report of its findings and recommendations and certify that the described investigation if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child.

History: En. Sec. 11, Ch. 240, L. 1957.

61-212. Effect of final decree. (1) After the final decree of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

History: En. Sec. 12, Ch. 240, L. 1957.

61-213. Confidential nature of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this act shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except on order of the judge of the court in which the decree of adoption was entered for good cause shown.

(3) All files and records pertaining to said adoption proceedings in the county and state departments of public welfare or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown.

History: En. Sec. 13, Ch. 240, L. 1957.

61-214. Appeal. An appeal may be taken from any final order, judgment or decree rendered hereunder to the district court by any person aggrieved thereby, in the manner provided for appeals from said court in other civil matters.

History: En. Sec. 14, Ch. 240, L. 1957.

61-215. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other

state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by section 12 [61-212] of this act.

History: En. Sec. 15, Ch. 240, L. 1957.

61-216. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 16, Ch. 240, L. 1957.

61-217. Short title. This act may be cited as the "Uniform Adoption Act."

History: En. Sec. 17, Ch. 240, L. 1957.

Repealing Clause

Section 18 of Ch. 240, Laws 1957 repealed all acts and parts of acts in conflict therewith.

TITLE 62—PARKS AND PUBLIC RECREATION

Chapter 3. State parks, 62-304.

CHAPTER 3—STATE PARKS

Section 62-304. Powers and duties.

62-301. Purpose.

References

Cited or applied in State ex rel. Olsen v. Sundling, — M —, 281 P 2d 499, 501.

62-304. Powers and duties. The commission is hereby authorized and directed to make a study to determine the scenic, historic, archaeologic, scientific and recreational resources of the state, and shall have power by purchase, lease, agreement, or by acceptance of donations, or condemnation, to acquire for and in the name of the state, any such areas, sites or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission shall also have power in its discretion to receive and accept in the name of the state, in fee or otherwise, any such areas, sites, or objects conveyed, entrusted, donated, or devised to the state, and with like discretion to accept gifts, bequests, or contributions of money or other property to be expended or used for any of the purposes of this act; provided, that no contract shall be entered into or other obligation incurred under the provisions of this act until moneys have been appropriated therefor by the legislature or are otherwise made available as herein provided. The commission shall also have jurisdiction, custody and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments which are now under the control and management of the state, including wayside camps and other public conveniences acquired, improved and maintained by the state highway commission and contiguous to the state highway system.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955.

Amendment

The 1955 amendment substituted the word "including" for the word "except" in the last sentence.

Repealing Clause

Section 2 of Ch. 46, Laws 1955 repealed all acts and parts of acts in conflict therewith.

In General

Where the state, as bailee of a road roller given to it by the federal government, was in lawful possession, it is therefore lawfully entitled to that possession as against anyone with no better right. It may vindicate that possession accordingly and to that end may maintain an action in claim and delivery where there was an unauthorized sale by a person purporting to act for the state to a third person. State ex rel. Olsen v. Sundling, — M —, 281 P 2d 499, 502.

TITLE 63—PARTNERSHIP

CHAPTER 3—PARTNERSHIP IN GENERAL—RELATION OF PARTNERS TO ONE ANOTHER

63-301. Rules determining rights and duties of partners.

References

Cited or applied in Hansen v. Hansen, — M —, 297 P 2d 879, 883.

Collateral References

Liability for assault by partner. 30 ALR 2d 859.

Right of partner to account where firm business or transaction are illegal. 32 ALR 2d 1345.

Lessee interest of individual as becoming partnership asset of firm subsequently formed. 37 ALR 2d 1076.

63-304. Partner accountable as a fiduciary.

Operation and Effect

Where a partner assumes the responsibility of management and operation of a partnership business, and takes over the accounts, books and bank accounts thereof, he acts as trustee for the partnership and his books and accounts of the partnership must be full, true and exact, and that he cannot defeat the rights of his co-partner to a true settlement and a proper distribution of the assets by failing to keep full and complete accounts. Hansen v. Hansen, — M —, 297 P 2d 879, 881.

CHAPTER 4—GENERAL PARTNERSHIP—PROPERTY RIGHTS OF A PARTNER

63-402. Nature of a partner's right in specific partnership property.

References

Cited or applied in Hansen v. Hansen, — M —, 297 P 2d 879, 884.

CHAPTER 5—GENERAL PARTNERSHIP—DISSOLUTION AND WINDING UP

63-503. Causes of dissolution.

References

Cited or applied in McNaught v. Weyh, 128 M 418, 276 P 2d 491, 495; Hansen v. Hansen, — M —, 297 P 2d 879, 883.

TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter 2. Personal rights—libel and slander—protection of personal relations, 64-211 to 64-213.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

64-112. (5685) Power of persons whose incapacity has been adjudged, etc.

References

Cited or applied in State v. Kitchens, — M —, 286 P 2d 1079, 1081.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION OF PERSONAL RELATIONS

Section 64-211. Discrimination on grounds of race, color, or creed in places of public accommodation or amusement prohibited.
64-212. Merchant, premises and merchandise defined.
64-213. Right of merchant to request individuals to keep merchandise in full view—freedom from liability.

64-211. Discrimination on grounds of race, color, or creed in places of public accommodation or amusement prohibited. No person, partnership, corporation, association or organization owning or managing any place of public accommodation or amusement shall discriminate against any person or group of persons solely on the ground of race, color or creed.

History: En. Sec. 1, Ch. 240, L. 1955.

Title of Act

An act to guarantee the full and equal enjoyment of all places of public accommodation and amusement, and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 240, Laws 1955 repealed all acts and parts of acts in conflict therewith.

64-212. Merchant, premises and merchandise defined. The term "merchant" as used herein shall mean an owner or operator, and the agent, consignee, employee, lessee, or officer of an owner or operator, of any merchant's premises. The term "premises" shall mean any establishment or part thereof wherein merchandise is displayed, held or offered for sale. The term "merchandise" shall mean any personal property, capable of manual delivery, displayed, held or offered for sale by a merchant.

History: En. Sec. 1, Ch. 11, L. 1957.

Title of Act

An act relating to the right of any merchant, as specifically defined, to request any individual on his premises to keep in full view any merchandise the individual may have removed from its place of display and providing that the merchant shall not be liable for civil or criminal slander on account of having made such a request.

64-213. Right of merchant to request individuals to keep merchandise in full view—freedom from liability. Any merchant shall have the right to request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display

or elsewhere, whether for examination, purchase, or for any other purpose. No merchant shall be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request.

History: En. Sec. 2, Ch. 11, L. 1957.

TITLE 66—PROFESSIONS AND OCCUPATIONS

Chapter 1. Architecture—regulation of practice, 66-103, 66-106, 66-107, 66-112, 66-114.
2. Auctioneers and auction sales, 66-220 to 66-230.
4. Barbers and barber shops, 66-403, 66-408, 66-411.
5. Chiropractic—regulation of practice, 66-505.
8. Cosmetology (beauty shops) regulation, 66-801, 66-802, 66-815.
10. Medicine—regulation of practice, 66-1003.
15. Pharmacy—regulation of sale of drugs and medicines, 66-1507.
19. Real estate brokers—regulation—real estate commissioner, 66-1903, 66-1910, 66-1916, 66-1917.
20. Stock-brokers and investment companies (blue sky law), 66-2002, 66-2003, 66-2007, 66-2018, 66-2023, 66-2024.
22. Veterinary medicine—regulation of practice, 66-2201 to 66-2204, 66-2207 to 66-2212.
23. Engineers and land surveyors, 66-2324 to 66-2347.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

Section 66-103. Definitions—examinations for certificates to practice—subjects embraced in—granting of certificates—registration without examination under certain circumstances.
66-106. Penalty for illegal practice or misuse of title.
66-107. Registration limited to individuals—employees of architects entitled to practice under supervision—exceptions—exemptions.
66-112. Revocation of license.
66-114. Scale of compensation for architects on public buildings.

66-103. (3231) **Definitions—examinations for certificates to practice—subjects embraced in—granting of certificates—registration without examination under certain circumstances.** (a) Except as otherwise provided in this act, no person shall practice architecture in the state of Montana or use the title "architect" or "registered architect," or any words, letters, figures, or other device indicating or intending to imply that he or she is an architect, without having qualified as required by this act.

(b) The practice of architecture within the meaning and intent of this act consists of rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or any other service in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(c) An architect within the meaning of this act is an individual technically and legally qualified to practice architecture and who is authorized under this act to practice architecture.

(d) A building, for the purposes of this act, is a structure consisting of foundation, floors, walls, columns, girders, and roof, or a combination of any number of these parts, including related mechanical and electrical equipment, with or without other parts or appurtenances.

(e) Every person hereafter wishing to practice architecture in this state shall apply to said board for a certificate so to do. Every person so applying shall submit to an examination in the following branches, to-wit: Arithmetic and elementary mathematics, knowledge of building materials and construction, structural, mechanical and electrical engineering

phases of construction, architectural drawing, technical education and experience, and such other branches as the board may deem advisable. Said board shall cause such examination to be both scientific and practical, but of sufficient severity to test the candidate's fitness to practice architecture in this state. After examination said board shall, if the candidate has been found qualified, grant a certificate to such candidate to practice architecture within the state of Montana, which said certificate can only be granted on the consent of not less than two members of the board, and attested by the secretary, and have the seal of said board attached thereto; provided, that the president of the board may, in the time of intervening between the sessions of the board, grant a certificate to any person desiring to practice architecture within the state of Montana, after satisfying himself of the qualifications of the applicant, which said certificate shall be good until the next regular meeting of the board; provided, however, the board may make arrangements with similar boards in the several states insofar as practicable, whereby due credit for state and territorial licenses will be allowed in the state of Montana to such licensees of said boards as desire to secure license to practice architecture in this state, and whereby licensees of the board of architectural examiners in this state will secure due credit for license issued by said board whenever such licensees desire to secure license to practice in any other state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of architecture in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states. The board shall by regulation establish methods and procedures for investigation of applicants for license by reciprocity.

(f) Any properly qualified person shall be granted registration without examination who submits an affidavit establishing to the satisfaction of the board of architectural examiners that he or she was a resident of the state of Montana for one (1) year immediately preceding the passage and approval of this act, that he or she was regularly engaged in the practice of architecture in the state of Montana for five (5) years immediately preceding July 1, 1957; provided that registration shall not be granted under this subsection unless the application therefor is filed with the board of architectural examiners within one (1) year after passage and approval of this act.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

66-106. (3234) **Penalty for illegal practice or misuse of title.** Any person who shall use the title "architect" or "registered architect" or any other words, letters, figures, or other device indicating or intending to imply that the person using the same is an architect, or who shall engage in the practice of architecture within the meaning of this act, or shall accept compensation for rendering architectural service, without first having complied with the provisions of this act, shall be deemed guilty of

a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this act shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R. C. M. 1921; amd. Sec. 4, Ch. 149, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Separability Clause

Section 5 of Ch. 149, Laws 1957 read "If any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

Repealing Clause

Section 6 of Ch. 149, Laws 1957 repealed all acts and parts of acts in conflict therewith.

66-107. (3235) Registration limited to individuals — employees of architects entitled to practice under supervision—exceptions—exemptions. (a) No firm, company, partnership, association, corporation or other similar organization shall be registered as an architect. Only individuals shall be registered as architects but a number of architects constituting a firm may use the collective title "architects" or "registered architects."

(b) Nothing contained in this act shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this act from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto. Nor shall anything contained in this act be construed to apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health; nor to prevent the preparation of details and shop drawings by persons, other than architects, for use in connection with the execution of their work; nor to prevent the preparation of drawings or details for fixtures, cabinet work, furniture, or other interior appliances or equipment, or for any work necessary to provide for their installation unless the same involves public health or safety. None of the acts enumerated in this paragraph shall be interpreted or construed as the practice of architecture.

(c) Nothing in this act shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this act:

1. Consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government.

2. Professional engineers from performing architectural services which are purely incidental to their engineering practice.

3. Any person from planning, designing, altering, constructing, repairing, or supervising construction of residential or farm buildings.

4. The planning, designs, alteration, consultation, repair or supervision of a building by its owner.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R. C. M. 1921; amd. Sec. 2, Ch. 149, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

66-112. (3240) **Revocation of license.** The board of architectural examiners may revoke any certificate in the manner hereinafter provided if proof satisfactory to the board be presented in the following cases: (a) In case it is shown that the certificate was obtained through fraud or misrepresentation; (b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) In case the holder of the certificate has been found guilty by said board of gross incompetency or of recklessness in the planning or construction of buildings.

The proceedings for revocation of a certificate shall be commenced by filing written charges against the accused with the board of architectural examiners either by the board itself or by any complainant. A copy of the charges together with a notice of the time and place of hearing shall be served on the accused at least thirty calendar days in advance of such hearing. Where personal service cannot be made within the state of Montana, service may be made by publication in accordance with such rules as the board may adopt, following generally and in principle the provisions of sections 93-3013, 93-3014, and 93-3015 of the Revised Codes of Montana of 1947. At the hearing, the accused shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the board is hereby empowered to administer oaths. The board shall make a written report of its findings and conclusions, which report, with a transcript of the entire record of the proceedings, shall be filed in the office of the secretary of state, and, if the board's findings and conclusions shall be adverse to the accused, his or her certificate shall stand revoked and annulled at the expiration of thirty days from the filing of such report, unless within said period of thirty days a writ of review shall be issued as hereinafter provided, in which event said certificate shall not stand suspended until the final determination of the courts upon such writ of review.

Any party aggrieved by the decision of the said board may seek a review thereof in the district court of the first judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, inclusive, Revised Codes of Montana of 1947, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

The said board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce the documents when duly directed by said board, the board shall have power to refer the said matter to the district court of the first

judicial district of the state of Montana, which may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R. C. M. 1921; amd. Sec. 3, Ch. 149, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

66-114. Scale of compensation for architects on public buildings. No payment for professional services of any architect or architects, relating to the planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district in the state, shall hereafter be made at any greater rate of compensation for such professional services than hereinafter set forth; and no contract for professional services of any architect or architects, relating to the planning or construction of any such public buildings, works or improvements, shall hereafter be entered into by any board, department or agency of the state of Montana, or of any county, city or school district in the state which shall provide for payment of any greater rate of compensation for such professional services than the following percentages of actual cost of construction of such buildings, works or improvements, to wit:

"A" Rate—Specialized Types: Structures of individual design and detail requiring special skill and prolonged study such as banks, clinics, club buildings, hospitals, libraries, memorials, monuments, museums, and residences:

	Fee	Construction Cost
	8.00% of first	$ 50,000
Plus	7.75% of next	$ 50,000
Plus	7.50% of next	$100,000
Plus	7.00% of next	$300,000
Plus	6.00% of next	$500,000
Plus	5.00% of all additional	

"B" Rate—Conventional Types: Structures of conventional character such as apartments, administrative buildings, bus and railway depots, churches, dormitories, fire stations, nurses' homes, office buildings, restaurants, schools, shopping centers, stores and shops and theatres:

	Fee	Construction Cost
	7.50% of first	$ 50,000
Plus	7.25% of next	$ 50,000
Plus	7.00% of next	$100,000
Plus	6.50% of next	$300,000
Plus	5.50% of next	$500,000
Plus	4.50% of all additional	

"C" Rate—Utilitarian Types: Structures of simplest utilitarian character such as airport hangars, armories, field houses, garages, shop maintenance buildings, multiple housing projects, stadiums, warehouses:

	Fee	Construction Cost
	6.50% of first	$ 50,000
Plus	6.25% of next	$ 50,000
Plus	6.00% of next	$100,000
Plus	5.50% of next	$300,000
Plus	4.50% of next	$500,000
Plus	3.50% of all additional	

All architectural plans and specifications for such public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957.

Amendment

The 1957 amendment substituted the three separate rate schedules for one (text of which see parent volume).

Separability Clause

Section 2 of Ch. 68, Laws 1957 read "If any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

Repealing Clause

Section 3 of Ch. 68, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—AUCTIONEERS AND AUCTION SALES

Section 66-220. Short title.
66-221. Definitions.
66-222. Unlawful to sell at public auction without first securing license.
66-223. Application for license—contents.
66-224. Bond—filing—liability on.
66-225. License fee—disposition.
66-226. Issuance of license—terms—record—form.
66-227. Inventory of merchandise sold and prices received—filing.
66-228. Unlawful acts—penalty.
66-229. Exemptions from act.
66-230. Powers of cities and towns not affected.

66-220. Short title. This act shall be known as the "Public Auction Law."

History: En. Sec. 1, Ch. 111, L. 1955.

Title of Act

An act defining public auction sales and to regulate and license sale by auction of new merchandise, and to fix the amount of license fees to be paid, to provide for the collection thereof and to require bond and the filing of inventories of goods sold, and to provide for exemptions from this act, to grant full power to towns and cities to pass auction sale laws and to provide penalties for the violation or noncompliance of any of terms of this act, and to provide a saving clause; and providing an effective date.

66-221. Definitions. The words "public auction sales" when used in this act, shall mean the offering for sale or selling of new goods, wares or merchandise to the highest bidder or offering for sale or selling of new goods, wares or merchandise at a high price and then offering the same at successive lower prices until a buyer is secured, in the manner defined and set out in sections 66-213 and 66-214.

The words "new goods, wares and merchandise" when used in this act, shall mean and include all goods, wares and merchandise not previously sold at retail.

History: En. Sec. 2, Ch. 111, L. 1955.

66-222. Unlawful to sell at public auction without first securing license. It shall be unlawful for any person, firm, association or corporation to sell, dispose of, or offer for sale at public auction in the state of Montana any new goods, wares or merchandise, unless such person, firm, association or corporation, and the owners of such new goods, wares or merchandise to be offered for sale or sold if such are not owned by the vendors, shall have first secured a license as herein provided and shall have complied with the other requirements of this act herein set forth.

History: En. Sec. 3, Ch. 111, L. 1955.

66-223. Application for license—contents. Any person, firm, association or corporation desiring to offer any new goods, wares or merchandise for sale at public auction shall file application for a license for that purpose with the treasurer of the county in this state in which the said auction is proposed to be held. The application shall be filed not less than ten (10) full days prior to the date the said auction is to be held. The application shall state the following facts:

(a) The name, residence and postoffice address of the person, firm, association or corporation making the application, and if a firm, association or corporation, the name and address of the members of the firm or officers of the association or corporation, as the case may be.

(b) If the applicant is a corporation then there shall be stated on the application form the date of incorporation, the state of incorporation and if for a corporation formed in a state other than the state of Montana the date on which such corporation qualified to do business as a foreign corporation in the state of Montana.

(c) The name, residence and postoffice address of the auctioneer who will conduct such auction sale.

(d) A detailed inventory and description of all such new goods, wares or merchandise to be offered for sale at such auction which inventory shall set forth the cost to the applicant of the several items contained in such inventory.

(e) Attached to the application shall be copies of notices, which ten (10) days before the said application has been filed, shall have been mailed registered mail by the proposed seller to the state board of equalization of the state of Montana or such other department as may be charged with the duty of collecting gross income taxes, corporation licenses, or such other taxes of a comparable nature, and to the assessor of the county in which said auction is to be held. The said notices must state the precise time and place where the said auction is to be held, the approximate value of the new goods, wares or merchandise to be offered for sale or sold and such other information as the said state board of equalization or the said county assessor may request.

(f) The number of days on which said auction will be held.

(g) The said application shall be verified.

History: En. Sec. 4, Ch. 111, L. 1955.

66-224. Bond—filing—liability on. At the time of filing said application, and as a part thereof, the applicant shall file and deposit with the said county treasurer a bond, with sureties to be approved by the said county treasurer, in the penal sum of two (2) times the value of the merchandise proposed to be offered for sale at public auction as shown by the inventory filed, running to the state of Montana, and for the use and benefit of any purchaser of any such new goods, wares or merchandise at the said auction who might have a cause of action of any nature arising from or out of a sale or sales at such auction or against the applicant or against the auctioneer; the said bond shall be further conditioned on the payment by the applicant of all taxes that may be payable by or due from, the applicant to the state of Montana or any department thereof or any subdivision of the state of Montana, municipal or otherwise, the payment of any fines that may be assessed by any court against the applicant or against the auctioneer for violation of the provisions of this act, and the satisfaction of all causes of action commenced within one (1) year from the date that such sale is made at any such auction and arising therefrom, provided, however, that the aggregate liability of the surety for all said taxes, fines, and causes of action shall in no event exceed the sum of such bond but there shall be no limitation of liability against the owners of the new goods, wares and merchandise or the auctioneer or the applicant for the license.

In such bond the applicant and surety shall appoint the treasurer of said county in which said bond is filed the agent of the applicant and the surety for the service of process. At the time that said bond is filed and deposited with the county treasurer, as herein provided, the auctioneer shall appoint the said county treasurer the agent of the auctioneer for the service of process. In the event of such service of process, the agent on whom such service is made shall, within five (5) days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he has been served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the court's jurisdiction.

The state of Montana or any department or subdivision, municipal or otherwise, thereof, or any person having a cause of action arising out of any sale of such new goods, wares or merchandise may join the applicant and the surety on such bond and the auctioneer in the same action, or may in such action sue either such applicant or the surety or the auctioneer alone.

History: En. Sec. 5, Ch. 111, L. 1955.

66-225. License fee—disposition. The applicant desiring to file an application with the treasurer for a license to conduct a public auction shall pay to the treasurer of such county in which the said application is made, a license fee of fifty dollars ($50.00) first day and twenty-five dollars ($25.00) per day for each succeeding day that he proposes to conduct a public auction. And such applicant shall thereupon file the treasurer's

receipt for such payment with the treasurer of the said county with whom the said application is filed. All moneys paid in accordance herewith shall be deposited by the county treasurer to the credit of the general fund of the county to which it is paid.

History: En. Sec. 6, Ch. 111, L. 1955.

66-226. Issuance of license—terms—record—form. Upon the filing of such application and after the applicant has established that he has fully complied with all the provisions of this act, the treasurer of said county, shall issue to the applicant a license authorizing the said applicant to conduct a public auction as proposed in said application; such license shall not be transferable and shall be valid only in the county where issued and shall not be valid in any town or city which has enacted an ordinance licensing public auction sales unless a license is also obtained from such city or town. No license shall be good for more than one (1) person, unless such persons shall be co-partners, nor for more than one (1) place in said county.

The treasurer of said county shall keep a record of such licenses in a book provided for that purpose, which shall at all times be open to public inspection.

No particular form of license shall be required to be issued by said treasurer. However, any license issued shall state the name of the person, firm, association or corporation which is licensed, the precise place at which such auction sale is to be held and the number of days for which the license is issued.

History: En. Sec. 7, Ch. 111, L. 1955.

66-227. Inventory of merchandise sold and prices received—filing. Within ten (10) days after the last day of said auction sale, the applicant shall file in duplicate with the county treasurer of the county wherein said auction sale was held, an inventory of all merchandise sold at such auction and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the said treasurer. The county treasurer shall immediately after receiving such report and inventory forward a copy thereof to the state board of equalization.

History: En. Sec. 8, Ch. 111, L. 1955.

66-228. Unlawful acts—penalty. Every person, firm, association or corporation, either as principal or agent, who shall in any manner engage in, or conduct a public auction sale, without having first obtained a license as hereinbefore provided, or who shall knowingly advertise, represent or hold forth any sale of goods, wares or merchandise to be conducted contrary to the provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined in any sum not less than two hundred dollars ($200) and not more than one thousand dollars ($1,000.00), to which may be added imprisonment of not less than thirty (30) days and not more than one hundred and eighty (180) days.

History: En. Sec. 9, Ch. 111, L. 1955.

66-229. Exemptions from act. The provisions of this act shall not extend to the sale at public auction of livestock, farm machinery or farm

produce or other items commonly sold at farm sales, or to auction sales by individuals of new merchandise, which was assessed personal property tax or is replacement stock of merchandise inventory which was assessed personal property tax in the county in which the sale is to be had, and to auction sales under the direction of any court or court officers as may be required by law nor shall it apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to a bona fide sale of goods, wares and merchandise by sample for future delivery, or by sales made by sheriffs, constables or other public officers selling goods, wares and merchandise according to law, nor to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors.

History: En. Sec. 10, Ch. 111, L. 1955.

66-230. Powers of cities and towns not affected. The towns and cities of the state of Montana are hereby given full power and authority to tax, license and regulate persons, firms, associations or corporations engaging in or desiring to engage in public auctions, and may require a license and charge a fee therefor; but such license fee shall not exceed the amount provided in this act for a county license but shall be in addition thereto and such towns and cities may provide for penalties for violations of said ordinance. A city or town license shall not be in lieu of a county license.

History: En. Sec. 11, Ch. 111, L. 1955.

Separability Clause

Section 12 of Ch. 111, Laws 1955 read "If any section, subsection, paragraph, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such [un]constitutionality or invalidity shall not affect the constitutionality or validity of the remaining portion or portions of this act."

Effective Date

Section 13 of Ch. 111, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

CHAPTER 4—BARBERS AND BARBER SHOPS

Section 66-403. Licensing and registration of barbers, barber shops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.
66-408. Compensation, funds and reports.
66-411. Fees to be paid by apprentices, students, barbers and barber shops.

66-403. (3228.21) **Licensing and registration of barbers, barber shops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.** A. A person is qualified to receive a certificate of registration to practice barbering:

(1) to (3). * * * [Subsections (1) to (3), same as parent volume.]

Every apprentice must file with the board of barber examiners a statement in writing showing the name and place of business of his or her instructor, or school, the date of commencement of the apprenticeship, and the full name and age of said apprentice, and shall pay to the board of barber examiners a fee of four dollars ($4.00), whereupon the board of barber examiners shall issue the said apprentice a card.

B. and C. * * * [Subdivisions B and C, same as parent volume.]

D. A barber shop, school or college must be conducted at a fixed place of establishment; no person or corporation shall open or maintain a barber shop, school or college, or hold himself or itself out as engaging in or conducting a barber shop, school or college, unless first licensed so to do by the board of barber examiners. Every barber school, or college, operating within the state of Montana must be in charge of a person who has had ten (10) years' continuous experience as a barber, providing that the owner of such school, or college shall first secure from the board of barber examiners a permit to operate on payment of an annual license fee of fifty dollars ($50.00), and shall keep said permit prominently displayed, and shall, before commencing business file with the secretary of state a bond to the state of Montana, which bond shall be approved by the attorney general, in the sum of two thousand dollars ($2,000.00) conditioned upon the faithful compliance of said barber school, or college, with all the provisions of this chapter; and to pay all judgments that may be obtained against said schools, or colleges, or the owners thereof on account of fraud, misrepresentation or deceit practiced by them, or by their agents; provided, further, that barber schools, or barber colleges shall not charge patrons for barbering services rendered; provided, further, that all barber schools, or colleges shall keep prominently displayed a substantial sign as a barber school, or barber college. Provided, further, that all barber schools, or colleges, upon receiving students shall immediately apply to the board of barber examiners for student permits upon blank forms provided by the board of barber examiners for such purposes.

An application for a barber shop, school or college license shall be in writing and verified on a form provided by the board of barber examiners. Upon receipt of an application for a license hereunder, and upon payment of the initial inspection fee, said board of barber examiners shall cause an investigation and inspection to be made as to the character of the applicant, and upon proper notice and after proper hearing shall report its findings to the secretary of the board of barber examiners, who shall grant a license, if the board of barber examiners finds that the applicant is of good character, and that the proposed barber shop, school or college is equipped and will be conducted as required by this act. Every application must be granted or refused within thirty (30) days from the date of filing of such application or within fifteen (15) days after the close of the hearing upon the application in case a hearing is held.

E. to I. * * * [Subdivisions E to I, same as parent volume.]

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957.

Amendment

The 1957 amendment in the last paragraph of subd. A raised the apprentice license fee from $3 to $4 and in the first paragraph of subd. D inserted the first provided further clause.

66-408. (3228.26) **Compensation, funds and reports.** Each member of the board shall receive a compensation of fifteen dollars ($15.00) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board.

The board of barber examiners shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary.

The board shall make an annual report of its proceedings and moneys expended by it to the governor of the state for the year ending on the 31st day of December preceding the making of said report.

History: En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957.

Amendment

The 1957 amendment raised the compensation each member shall receive per day from $10 to $15.

66-411. (3228.29) **Fees to be paid by apprentices, students, barbers and barber shops.** A. The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be fifteen ($15.00) dollars, and for the issuance of said certificate an additional four ($4.00) dollars. The fee to be paid by an apprentice or student for a certificate of registration shall be the sum of four ($4.00) dollars.

B. Each person registered as a barber, or barber apprentice, shall on or before the first day of July of each year pay a license fee of four ($4.00) dollars for the renewal of his or her certificate of registration, and if any barber, or barber apprentice, shall fail to have such certificate renewed on or before the first day of August of each year such barber, or barber apprentice, shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee, of five ($5.00) dollars, in addition to the regular fee of four ($4.00) dollars provided for herein, and if a certificate of registration is not renewed within one year after date of expiration thereof, such barber, or barber apprentice, shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a six (6) months' course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

C. In addition to the fees and charges now provided by existing law, all barber shops heretofore established, and which have been under the inspection of the board of barber examiners, shall pay an annual license fee of three ($3.00) dollars. Barber shops hereafter established shall pay an initial inspection license fee of fifteen ($15.00) dollars for the first year or portion thereof, and shall pay an annual license fee of three ($3.00) dollars for each calendar year thereafter.

D. All barber shops, schools or college licenses shall expire on the 31st day of May of each year, following the issuance of said license, and

every owner or manager of a barber shop, school or college which continues in active operation shall annually, on or before May 31st renew his barber shop, school or college license and pay the required fee.

Every barber shop, school or college license which has not been renewed during the month of May in any year shall expire on the 31st day of May in that year, and for the restoration of an expired barber shop license the fee shall be ten ($10.00) dollars, and for an expired barber school or college license, the fee shall be fifty-five ($55.00) dollars.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957.

Amendment

The 1957 amendment raised the fees from $3 to $4 in subds. A and B and from $1 to $3 in subd. C.

Repealing Clause

Section 4 of Ch. 237, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section 66-505. Applications to practice—fees for license.

66-505. (3142) **Applications to practice—fees for license.** Any person wishing to practice chiropractic in this state shall after March 5, 1951 make application to said board of chiropractic examiners through the secretary-treasurer thereof, and upon such form and in such manner as may be prescribed and directed by the board, at least fifteen (15) days prior to any meeting of said board. Each applicant shall be a graduate of a college of chiropractic approved by said board of chiropractic examiners in which he shall have attended a course of study of four (4) school years of not less than nine (9) months each, and after March 15, 1959, shall present evidence showing completion of two (2) full academic years of college or university work from an institution acceptable to the Montana state board of education; provided however, that those who are now duly licensed to practice chiropractic under the laws of the state of Montana shall not be affected by this provision. Application shall be made in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, and how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice, accompanying the same with proofs thereof, in the shape of diplomas, certificates, etc., and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the state board of chiropractic examiners, by each applicant for a license, a fee of twenty-five dollars ($25.00), ten dollars ($10.00) of which shall accompany application and the remainder, fifteen dollars ($15.00) shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1933; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955.

Compiler's Note

The date in the first sentence appeared as "March 15, 1951," before the 1955 amendment.

Amendment

The 1955 amendment inserted the word "shall" between the words "state" and "after" and deleted the word "shall" which appeared after "March 5, 1951" in the first sentence; substituted in the second sentence the words "college of chiropractic approved by said board of chiropractic examiners * * * shall not be affected by this provision" for "chartered school of chiropractic, in which he actually attended a course of study of at least four (4) school years of nine (9) months each, preceded by a four (4) years' high school course"; inserted the word "made" after the words "application shall be" and the word "and" before "how long" and "the length" in the third sentence.

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section 66-801. License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school, and provisions for registration of schools of cosmetology.
66-802. Definitions.
66-815. Fees.

66-801. (3228.1) **License required to practice or teach cosmetology or operate a beauty shop, cometological establishment or school, and provisions for registration of schools of cosmetology.** No person shall practice or teach cosmetology without a license and no place shall be used or maintained for the teaching of cosmetology for compensation, except under a certificate of registration, and no person shall operate, manage or conduct a beauty shop or school and teach the art therein, or practice therein, without a manager-operator license. Any person, firm, copartnership or corporation desiring to operate a cosmetological establishment shall make an application to the board for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

History: En. Sec. 1, Ch. 104, L. 1929; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

66-802. (3228.2) **Definitions.** The practice and teaching of cosmetology is defined to be and includes any or all work generally and usually included in the term "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness and beautification of the hair, scalp, face, arms or hands. Provided, however, that itinerant cosmetologists shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes, in any regularly established store or place of business, holding a license from the state of Montana as such store or place of business.

A cosmetological establishment is any premises, building or part of building whereon or wherein is practiced any branch or combination of branches of cosmetology, or the occupation of a hairdresser and cosmetician or cosmetologist.

A cosmetological establishment shall at all times be in charge of a manager-operator.

History: En. Sec. 2, Ch. 104, L. 1929; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955.

Amendment

The 1955 amendment added the second and third paragraphs.

66-815. (3228.15) **Fees.** Each applicant for examination to practice or teach shall pay, at the time of such application a fee of ten ($10.00) dollars. Each applicant for a manager-operator license shall pay a fee of five ($5.00) dollars for the issuance of such a license and the further sum of five ($5.00) dollars annually for each renewal thereof. A manager-operator or teacher of cosmetology who is retired or no longer active in any capacity in a cosmetological establishment or beauty school may obtain an inactive license upon the payment of an annual fee of three ($3.00) dollars. Every person, firm, copartnership or corporation originally opening a cosmetological establishment shall pay the sum of five ($5.00) dollars for the issuance of the original license. The sum of three ($3.00) dollars annually shall be paid by each existing cosmetological establishment and for each renewal cosmetological establishment license. Each person teaching cosmetology shall pay a fee of five ($5.00) dollars for the issuance of a license, and the further sum of five ($5.00) dollars annually for each renewal thereof. Every person, firm, copartnership, or corporation, owning, operating or conducting a school of cosmetology shall pay the sum of twenty-five ($25.00) dollars for a certificate of registration therefor, and pay the further sum of twenty-five ($25.00) dollars annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of three ($3.00) dollars. Each applicant for itinerant license as cosmetologist shall pay a fee of twenty-five ($25.00) dollars. Such license fees shall be paid annually in advance to the secretary of the board. No other or additional license or fee shall be imposed by any municipal corporation or any other political subdivision of the state of Montana for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955.

Amendment

The 1955 amendment deleted a sentence which read "Each person practicing cosmetology as an operator shall pay a fee of three ($3.00) dollars for the issuance of a license, and the further fee of three ($3.00) dollars annually for each renewal thereof" which appeared after the first sentence and added the third, fourth and fifth sentences.

Repealing Clause

Section 4 of Ch. 20, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

Section 66-1003. Examination and qualifications of applicants.

66-1003. (3118) **Examination and qualifications of applicants.** Every person who is an applicant to practice medicine and surgery in the state of Montana shall apply to said board of medical examiners for a certificate so to do. Every person applying shall present his or her diploma to the said board for verification as to its genuineness;

(a) if the diploma is found to be genuine, and is issued by a university, college or school currently approved by the council on medical education and hospitals of the American medical association, which fact said board shall determine, and

(b) if the person presenting and claiming said diploma be the person to whom the same was originally granted, said person shall thereupon,

submit to an examination at a time and place designated by said board, which may be the time and place of a regular meeting of said board, in and upon each of the following branches of medicine and surgery, to-wit: Anatomy, physiology, materia medica, therapeutics, practice of medicine, surgery, obstetrics, diseases of women and children, diseases of the nervous system, and diseases of the eye and ear. Said board shall cause such examination to be both scientific and practical, and of sufficient breadth, thoroughness and intensity to test the candidate's fitness to practice medicine and surgery. After examination, such board, if the candidate has been found qualified, shall grant a certificate to such candidate to practice medicine and surgery in the state of Montana, which said certificate can be granted only by the consent of not less than four (4) members of said board, and which said certificate shall be signed by the president and signed and attested by the secretary of said board and authenticated by the seal thereof; provided, however, that in all cases where an applicant for a certificate under this section shall produce and exhibit to said board a genuine certificate from a board of medical examiners (however designated by the law of any other state or a Province of Canada) duly appointed and existing under the laws of any state of the United States or a Province of Canada, and which state or Province of Canada through its said board recognizes certificates or licenses issued by the board of medical examiners of Montana, certifying to the facts:

(1) that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state or Province of Canada issuing said certificate, and that said board issuing said certificate has subjected the applicant to a thorough written examination to ascertain this fact, or certifying to the facts;

(2) that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state or Province of Canada issuing said certificate; and to the further fact, if such is the case, that said applicant was exempt from examination under the provisions of the law of said state or a Province of Canada, by reason of his residence in said state or a Province of Canada in the active practice of medicine and surgery at the time of the passage in said state or a Province of Canada of said law requiring the examination of applicants to practice medicine and surgery; and if said board of medical examiners is satisfied and finds that the requirements for admission to the practice of medicine and surgery in such other state or a Province of Canada, past or current, are the equivalent of the Montana requirements; he or she may, in the sound discretion of said board of medical examiners of Montana, upon paying the fee required of applicants for examination under the provisions of section 66-1008, and otherwise complying with all the requirements of the medical practice act of Montana, receive from said board of medical examiners of Montana a certificate to practice medicine and surgery within this state, and upon filing said certificate with the county clerk of the county in which he resides, as provided in section 66-1005, said person shall be a legally qualified practitioner of medicine and surgery in the state of Montana; provided, however, that the board may, in any case of an applicant for admission by reciprocity, require a full written examination of said

applicant. During any period intervening between the regular meetings of said board of medical examiners, any person desiring to practice medicine in this state may present his or her diploma to the president or secretary of said board, who may, upon the concurrence of any four (4) members of the board, issue a temporary certificate to practice, valid only until the next regular meeting of said board.

All physicians and surgeons who hold certificates heretofore granted by the existing board of medical examiners of Montana, or who are now legally entitled to practice medicine and surgery in this state, shall be exempt from the provisions of this section. Licenses or certificates to practice medicine and surgery in the state of Montana shall be issued only to citizens of the United States of America or to subjects of the Dominion of Canada who have filed their declaration of intention to become a United States citizen: provided, however, that the board of medical examiners shall have the power to annul and revoke any license or certificate issued to any physician and surgeon who has filed his declaration of intention to become a United States citizen, and who thereafter fails to become naturalized within the time and manner provided for and prescribed by Congress. The board may, by specific regulation, prescribe and enforce reciprocity requirements current with changes in standards in the practice of medicine and surgery.

History: Ap. p. Sec. 602, Pol. C. 1895; amd. Sec. 1, Ch. 13, L. 1903; re-en. Sec. 1587, Rev. C. 1907; re-en. Sec. 3118, R. C. M. 1921; amd. Sec. 2, Ch. 132, L. 1943; amd. Sec. 1, Ch. 119, L. 1957.

Amendment

The 1957 amendment inserted the reference to "Province of Canada" each time it appears in this section and in the last paragraph in the second sentence inserted the words "or to subjects of the Dominion of Canada who have filed their declaration of intention to become a United States citizen" and the proviso clause.

Repealing Clause

Section 2 of Ch. 119, Laws 1957 repealed all acts and parts of acts in conflict therewith.

66-1007. (3122) Practicing medicine without certificate—penalties.

Compiler's Note

The citation to State ex rel. Gilmore v. District Court, 45 M 335, 122 P 922 appearing in the parent volume on page 268 should read State v. Morris, 45 M 334, 122 P 917.

Physiotherapy

The practice of physiotherapy constitutes the practice of medicine under Montana law. State v. Bain, — M —, 295 P 2d 241, 243.

Where a person represented himself as Dr. Bain, physiotherapist, there was a violation of this section since physiotherapy is the practice of medicine and the affixing of the word "Dr." was in a medical sense. State v. Bain, — M —, 295 P 2d 241.

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section 66-1507. Annual renewal of registration fees.

66-1507. (3177) Annual renewal of registration fees. Every person licensed and registered by the board shall annually pay to the board a renewal of registration fee of five dollars ($5.00). It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. The practice of pharmacy in the state of Montana is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest.

Every certificate and renewal shall expire at the time prescribed, not later than one (1) year from its date. Any person who has been registered and licensed by the board and has defaulted in the payment of said renewal fee may be reinstated within two (2) years of such default without examination upon payment of the arrears.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R. C. M. 1921; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957.

Amendment

The 1957 amendment inserted the third sentence.

66-1522. Use of words "drug store," "pharmacy," etc.

Unconstitutional

Held, that since under sections 66-1508 and 66-1525 a store can sell ordinary household or medicinal drugs, they cannot be deprived of the use of the word "drug" in advertisement under this section since the act makes no requirement that the registered pharmacist who may use the name "drug" and sell the drugs make any analysis, inspection or examination of the drug to be passed on by him to the purchasing public. Pike v. Porter, 126 M 482, 253 P 2d 1055, 1056.

The provision excluding those who are not registered pharmacists from the use of the word "drug" in advertising household drugs bears no reasonable relationship to the protection of human life, health or safety but merely discriminates in favor of a certain class and is in consequence unconstitutional and invalid. Pike v. Porter, 126 M 482, 253 P 2d 1055, 1057.

CHAPTER 17—PHOTOGRAPHY—REGULATION

66-1701. Photography defined.

Unconstitutional

Chapter 37 of Laws 1937 (66-1701 et seq.) known as the Photographic Examiners Act declared unconstitutional as violative of sections 3 and 27 of Article 3 of the Montana Constitution and section 1 of the 14th Amendment to the Constitution of the United States. State v. Gleason, 128 M 485, 277 P 2d 530.

References

Cited or applied in Esterby v. Justice Court of Hellgate Township, 127 M 1, 256 P 2d 544, 545.

CHAPTER 19—REAL ESTATE BROKERS—REGULATION—REAL ESTATE COMMISSIONER

Section 66-1903. Real estate broker defined.
66-1910. License—application—bond—issuance—fee.
66-1916. Suspension or revocation—appeal and bond.
66-1917. Power of commissioner concerning hearings, oaths, subpoenas, process and witnesses.

66-1903. (4058) **Real estate broker defined.** A "real estate broker," within the meaning of this act, is a person who for a compensation, or promise thereof, sells or offers for sale, buys or offers to buy, lists or solicits for prospective purchasers, receives or demands an advance fee, negotiates, or offers to negotiate, either directly or indirectly, whether as the employee of another or otherwise, the purchase, sale, exchange of real estate, or any interest therein, for others, as a whole or partial vocation. The word "person" as used in this act, shall be construed to mean and include a corporation. The term "advance fee" as used in this act is a fee contracted for, claimed, demanded, charged, received or collected for a listing, advertisement or offer to sell or lease property in a publication

issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, other than a newspaper of general circulation, prior to the printing thereof. The provisions of this act shall not apply to any person who purchases property for his own use or account, nor to any person, who, being the owner of property, sells, exchanges, or otherwise disposes of the same for his own account, nor to any person holding a duly executed power of attorney written in a separate instrument designated as such, from the owner granting power to consummate the sale, exchange or leasing of real estate, nor to the services rendered by an attorney at law for or on behalf of his client, nor to any receiver, trustee in bankruptcy, guardian, administrator, or executor, nor to any person acting under the order of the court, nor to any person selling under a deed of trust.

History: En. Sec. 3, Ch. 195, L. 1921; re-en. Sec. 4058, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1933; amd. Sec. 1, Ch. 129, L. 1957.

Amendment

The 1957 amendment inserted the words "lists or solicits for prospective purchasers, receives or demands an advance fee" in the first sentence; added the third sentence and deleted the words "nor to any person making one single transaction a year" which formerly appeared as the first "nor clause" in the fourth sentence.

Repealing Clause

Section 2 of Ch. 129, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 129, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

66-1910. (4065) **License — application — bond — issuance — fee.** Any person, co-partnership, or corporation, desiring to carry on the business of real estate broker in this state shall make application for a license so to do upon a form prescribed by the commissioner, and shall file the same with the commissioner; when an individual makes the application, in the application shall be stated the full name of the applicant, and his business address, which shall be the place where he maintains his home office. The applicant shall file with the application a written recommendation, signed by at least five (5) responsible freeholders of the county in which the home office of the applicant is, in which the freeholders must certify that they believe the applicant to be a man of good moral character, and in their judgment well qualified to carry on the business of real estate broker. The applicant shall also file with his application a good and sufficient bond in the sum of five thousand dollars ($5,000.00), conditioned that the applicant shall conduct his business as real estate broker in accordance with the requirements of this act, provided that the total aggregate liability of any surety under such bond shall not exceed the face amount of the bond.

When a co-partnership makes application for a license it shall state in the application the full name of all the partners, their business addresses, the place where the principal office shall be maintained, and the commissioner shall require a recommendation, signed by at least five (5) responsible freeholders of the county in which the home office of the co-partnership is, in which the freeholders must certify that they believe that each of the members of said co-partnership is a man of good moral character and in their judgment well qualified to carry on the business of real

estate broker. The co-partnership shall also file with their application a good and sufficient bond in the sum of five thousand dollars ($5,000.00), conditioned that the co-partnership shall conduct their business as real estate brokers in accordance with the requirements of this act.

An unincorporated association shall comply with the rules prescribed for a co-partnership.

When a corporation makes application for a license, it shall state in its application a list of its officers and directors, and their addresses, its principal place of business in this state, which shall be deemed its home office, and the names of the officers for whom a license is asked; the commissioner shall require its filing of a recommendation for each of said officers as in the case of an individual applicant, a good and sufficient bond in the sum of five thousand dollars ($5,000.00), conditioned that the corporation shall conduct its business as a real estate broker in accordance with the requirements of this act, provided that the total aggregate liability of any surety under such bond shall not exceed the face amount of the bond.

The commissioner may require such other proof as he may deem advisable as to the honesty, truthfulness and good reputation of any applicant for a license, whether an individual or member of a co-partnership or officer of a corporation, before issuing the license; provided, however, that if a real estate broker has once been licensed under this act, upon his application for a renewal of his license, the commissioner may, in his discretion, waive the filing of new recommendations or references.

Upon the filing of the application, if the same be accompanied with a proper recommendation or recommendations, bond or bonds, and fee hereinafter specified, if the commissioner is satisfied with the showing made, he shall forthwith issue the license, which shall continue thenceforward, unless revoked, until the first day of April next ensuing. If the commissioner shall not be satisfied with the showing made by the applicant, or if the necessary bond or bonds, satisfactory to the commissioner be not given, he may refuse to issue the license, in which case the applicant must appear before the commissioner within the time and manner provided in this act whenever a license application is refused, cancelled, or revoked.

For every real estate broker's license issued, the commissioner shall require, before issuance, a fee of ten dollars ($10.00), provided, that if a license be taken out after the first day of October, but one-half the fee shall be required, but the license shall expire on the first day of April following, and in case of licenses issued to co-partnerships, unincorporated associations, and corporations, he shall require such fee for each such co-partnership, unincorporated association, or corporation to whom such license is issued.

History: En. Sec. 10, Ch. 195, L. 1921; re-en. Sec. 4065, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1953; amd. Sec. 1, Ch. 130, L. 1957.

Amendment

The 1957 amendment substituted the words "must appear before the commissioner within the time and manner provided in this act whenever a license application is refused, cancelled, or revoked" for the words "may appeal to the district court within ten days after notice that his application has been rejected" in the sixth paragraph.

Repealing Clause

Section 2 of Ch. 130, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 130, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

66-1916. (4071) **Suspension or revocation—appeal and bond.** If the commissioner, after a hearing as provided in this act, shall refuse to grant an application for a license or shall cancel or revoke a broker's or salesman's license and the broker or salesman shall feel aggrieved by the decision of the commissioner, he may appeal to the district court of the county in which he has his principal place of business by giving notice of such appeal in writing to the commissioner and filing a bond with the clerk of the district court in the sum of three hundred dollars ($300.00) to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, said bond and notice to be filed within ten (10) days from the date of the commissioner's decision. The filing of such notice and bond shall supersede the order of the commissioner until the final termination of such appeal. The judge of the court shall summarily hear and determine the questions involved upon said appeal, and shall receive and consider any pertinent evidence whether oral or documentary concerning the matter. If such aggrieved party shall fail to perfect his appeal or file said transcript as herein provided, said stay shall automatically terminate. Appeals from judgment of the district court may be taken to the supreme court in the same manner as appeals are taken in civil actions.

History: En. Sec. 16, Ch. 195, L. 1921; re-en. Sec. 4071, R. C. M. 1921; amd. Sec. 1, Ch. 131, L. 1957.

Amendment

The 1957 amendment inserted the words "after a hearing as provided in this act" and substituted "cancel" for "suspend" in the first sentence.

Repealing Clause

Section 2 of Ch. 131, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 131, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

66-1917. (4072) **Power of commissioner concerning hearings, oaths, subpoenas, process and witnesses.** The commissioner shall, before denying the application for a license or before canceling or revoking any license, set the matter down for a hearing and, at least ten (10) days prior to the date set for the hearing, shall notify the applicant or licensee in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or licensee an opportunity to be heard in person or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or licensee, or by mailing it by registered mail to the last known business address of the applicant or licensee. If the applicant or licensee is a salesman the commissioner also shall notify the broker employing him or in whose employ he is about to enter by mailing notice by registered mail to the broker's last known business address. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time. The commissioner shall have power to administer oaths, certify to all official acts and shall have power to subpoena and

bring before him any person in this state as a witness, compel the production of books and papers, and take the testimony of any person by deposition in the same manner as is prescribed by law in the procedure of the district courts of this state in civil cases. Process issued by the commissioner shall extend to all parts of the state and may be served by any person authorized to serve process. Each witness who shall appear by order of the commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases appearing in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commissioner, his fees and mileage shall be paid in the same manner as other expenses of said department are paid.

History: En. Sec. 17, Ch. 195, L. 1921; re-en. Sec. 4072, R. C. M. 1921; amd. Sec. 1, Ch. 132, L. 1957.

Amendment

The 1957 amendment added all that portion of this section from the beginning through the fourth sentence.

Repealing Clause

Section 2 of Ch. 132, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 132, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 20—STOCK-BROKERS AND INVESTMENT COMPANIES (BLUE SKY LAW)

Section 66-2002. Securities defined.
66-2003. Securities to which provisions of act not applicable.
66-2007. Permit to do business.
66-2018. Supervisory control and fees of commissioner.
66-2023. False entries or statements—penalty.
66-2024. Penalty for violation of act.

66-2002. (4027) **Securities defined.** The term "securities" as used in this act shall be taken to mean shares, bonds, debentures, evidence of indebtedness, certificates of interest or participation, certificates of interest in profit sharing agreement, collateral trust, certificates contracts, diversified trustee shares, fixed investment trusts, selected shares corporations, investment contracts, oil, gas or other mineral lease, right, royalty, or any interest therein, preorganization certificates or subscriptions, or contracts for the performance of personal services or the furnishing of materials in connection with the burial or cremation of dead human bodies which contracts are to be performed at a future time determinable only by the death of the person in connection with whose decease said services are to be performed or materials furnished, contracts or agreements or any other instrument commonly known as a security.

History: En. Sec. 1, Ch. 85, L. 1913; re-en. Sec. 4027, R. C. M. 1921; amd. Sec. 2, Ch. 179, L. 1929; amd. Sec. 2, Ch. 194, L. 1931; amd. Sec. 1, Ch. 178, L. 1957.

Amendment

The 1957 amendment inserted the words "oil, gas or other mineral lease, right, royalty, or any interest therein, preorganization certificates or subscriptions."

66-2003. (4028) **Securities to which provisions of act not applicable.** The provisions of this act shall not apply to the following securities:

1 to 6. * * * [Subdivisions 1 to 6, same as parent volume.]

7. Securities listed, or approved for listing upon notice of issuance or upon notice of issuance and evidence of satisfactory distribution, upon the New York stock exchange, the Boston stock exchange, the board of trade of the city of Chicago, American stock exchange, Midwest stock exchange, or upon any other stock exchange as to which there may be in effect a written designation by the investment commissioner stating that it is in the public interest that securities listed or approved for listing upon such other exchange be exempt under this subsection, and all securities senior or equal in rank to any securities so listed or approved or represented by subscription rights for any of the foregoing securities or evidence of indebtedness guaranteed by companies, any security of which is so listed or approved, such securities to be exempt only so long as such listing shall remain in effect.

8 and 9. * * * [Subdivisions 8 and 9, same as parent volume.]

10. Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons during any period of twelve (12) consecutive months, if the seller reasonably believes that all the buyers are purchasing for investment.

11. Original subscriptions to stock by those who have signed articles of incorporation as bona fide incorporators, providing said articles of incorporation are not signed by more than fifteen (15) persons and no part of such original issue of capital stock is taken for the purpose of public distribution.

History: En. Sec. 1, Ch. 85, L. 1913; re-en. Sec. 4028, R. C. M. 1921; amd. Sec. 3, Ch. 179, L. 1929; amd. Sec. 2, Ch. 47, L. 1933; amd. Sec. 1, Ch. 120, L. 1937; amd. Sec. 2, Ch. 178, L. 1957.

Amendment

The 1957 amendment made numerous changes in subd. 7 for former text of which see parent volume; deleted a former subd. 10 which read "10. Securities of a corporation where the persons holding the same shall not exceed fifty in number" and added new subds. 10 and 11.

66-2007. (4032) **Permit to do business.** It shall be unlawful for any investment company or stock-broker, or any representative thereof, to sell, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatsoever, of any stocks, bonds, or other securities of any kind or character, other than those exempted from the provisions hereof by the definitions herein provided, without a permit from the state investment commissioner as hereinafter provided. No permit under this act shall be issued to any agent or stock-broker who has violated this act or any permit or ruling of the investment commissioner thereunder, or who has been convicted of a felony.

History: En. Sec. 5, Ch. 85, L. 1913; re-en. Sec. 4032, R. C. M. 1921; amd. Sec. 3, Ch. 178, L. 1957.

Amendment

The 1957 amendment added the second sentence.

66-2018. (4043) **Supervisory control and fees of commissioner.** The investment commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock-brokers, domestic or foreign, licensed under this act, and shall have the power to establish such rules and regulations as may be reasonable or

necessary to carry out the purposes and provisions of this act, and whenever the investment commissioner shall believe from evidence satisfactory to him that any person, co-partnership, association, or corporation has violated or is about to violate any provisions of this act or any finding, decision, permit, rule, regulation or license made in accordance with the provisions thereof, he may transmit such facts as may be available concerning such violative acts or practices to the attorney general whose duty it shall be to apply to the district court of Lewis and Clark county for an order enjoining such person, co-partnership, association, or corporation from continuing in such violation, or engaging therein or doing any act or acts in furtherance thereof. In said action an order or judgment may be entered awarding such temporary or final injunction as may be proper. All such investment companies or stock-brokers shall be subject to examination by the investment commissioner, or his duly authorized agents or deputies, at any time the investment commissioner may deem it advisable, and in the same manner as is now provided for the examination of state banks. The rights, powers, and privileges of the investment commissioner in connection with such examination shall be the same as is now provided with reference to the examination of state banks. Such investment company or stock-broker shall pay a fee for each examination made by said investment commissioner, or his deputies or agents, of not to exceed ten dollars for each day or fraction thereof, plus the actual traveling and hotel expenses of said commissioner, or his agent or deputy, that he is absent from the capitol building for the purpose of making such examination, and the failure or refusal of any investment company or stock-broker to pay such fees upon the demand of the investment commissioner, or his deputy or agent, while making such examination, shall work a forfeiture of his or its right to do business in this state.

History: En. Sec. 16, Ch. 85, L. 1913; re-en. Sec. 4043, R. C. M. 1921; amd. Sec. 4, Ch. 178, L. 1957.

Amendment

The 1957 amendment inserted all that portion of the first sentence beginning with the words "and shall have the power to establish such rules and regulations * * *"; added the second sentence and capitalized the word "All" to begin the third sentence.

66-2023. (4048) **False entries or statements — penalty.** Any person who shall knowingly or wilfully subscribe to, or make or cause to be made, any false statements or false entry in any book of such investment company or stock-broker, or exhibit any false paper with the intention of deceiving any person authorized to examine into its affairs, or who shall make or publish any false or misleading statements of its financial condition, or of the stocks, bonds, or other securities by it offered for sale, or who, in any application to the commissioner, or in any proceeding before him, or in any examination, audit, or investigation made by him or his authority, knowingly makes any false statement or representation, or who, with knowledge of its falsity, files or causes to be filed in the office of the commissioner any false statement or representation concerning such company or stock-broker or the property which it then holds or proposes to acquire, or concerning its financial condition or other affairs, or concerning its proposed plan of business, or who in connection with any transaction or transactions involving any offer to sell or to buy securities, or

any sale or purchase of securities, including any securities exempted under section 66-2003, directly or indirectly, knowingly or wilfully, employs any device, scheme, or artifice to defraud, or makes any untrue statement of material fact, or omits to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engages in any transaction, practice, or course of business which operates or would operate as a fraud or deceit, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than ten thousand dollars, and shall be imprisoned for not less than one year nor more than ten years in the state penitentiary.

History: En. Sec. 21, Ch. 85, L. 1913; re-en. Sec. 4048, R. C. M. 1921; amd. Sec. 5, Ch. 178, L. 1957.

Amendment

The 1957 amendment inserted all that portion of this section beginning with the words "or who, in any application to the commissioner" down to and including the words "or course of business which operates or would operate as a fraud or deceit" and raised the minimum penalty from $200 to $500.

66-2024. (4049) **Penalty for violation of act.** Any person or persons, agent or agents, investment company, or stock-broker, who shall violate any of the provisions of this act, or who shall knowingly or wilfully, directly or indirectly offer for sale, or negotiate for the sale of or sell, or issue, or cause to be issued any security contrary to the provisions of this act, or in nonconformity with a permit of the commissioner authorizing the same, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes, if any, specified in such permit, or to any purpose specified in such permit in excess of any amount limited in such permit to be used for such purpose, or who, with knowledge that any security has been issued, in violation of any provision of this act, or regulations thereunder, sells, or offers the same for sale, or who wilfully violates or fails, omits, or neglects to obey, observe, or comply with any order, permit, decision, rule, regulation, demand, or requirement, or any part or provision thereof, of the commissioner under the provisions of this act, or who with one or more other persons conspires to violate any permit or order issued by the commissioner or any of the provisions of this act, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined for each offense not less than five hundred dollars nor more than ten thousand dollars, or shall be imprisoned in the state penitentiary for not less than one year nor more than ten years, or by both such fine and imprisonment.

History: En. Sec. 22, Ch. 85, L. 1913; re-en. Sec. 4049, R. C. M. 1921; amd. Sec. 6, Ch. 178, L. 1957.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 7 of Ch. 178, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 178, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

Section 66-2201. Appointment of state board of veterinary medical examiners.
66-2202. Organization of board—quorum—powers.
66-2203. Expenses and funds—records and reports.
66-2204. Applications for license to practice—examinations—fees.
66-2207. Issuance, registration and reinstatement of licenses.
66-2208. Display of license and certificate—arrangement with other boards.
66-2209. Veterinary medicine defined.
66-2210. Refusal, suspension, and revocation of license and certificate.
66-2211. Interpretation of statute—persons not embraced within provisions.
66-2212. Practice in violation of law—penalties.

66-2201. (3217) **Appointment of state board of veterinary medical examiners.** There is hereby created a state board of veterinary medical examiners, to be appointed by the governor of the state of Montana, which shall consist of five (5) reputable veterinarians who shall have graduated from a college authorized by law to confer degrees and having educational standards equal to those approved by the American veterinary medical association, and each of whom shall be licensed and registered under this act. Appointments shall be made for the term of five (5) years, provided that first appointments made pursuant to this chapter shall be one (1) for one (1) year, expiring on July 31, 1956, and one (1) for four (4) years, expiring on July 31, 1959, and provided, further, that the provisions of this chapter shall not affect or alter the terms of office of the present members of the state board of veterinary examiners which expire respectively on July 31, 1955, July 31, 1957, and July 31, 1958. Members of the board shall serve until their successors are appointed and qualified. The Montana state veterinary medical society shall, at each annual meeting, nominate twice the number of examiners to be appointed that year on the board. The names of such nominees shall be annually transmitted under seal by the president and secretary, prior to July first, to the governor, who shall, prior to August first, appoint from such lists the examiners that will be required to fill any vacancies that will occur from expiration of term on July thirty-first. Any other vacancy, however occurring, shall likewise be filled by the governor for the unexpired term. Each nominee, before appointment, shall furnish to the governor proof that he has received a degree in veterinary medicine from an authorized veterinary medical school, and that he is licensed by the state board of veterinary medical examiners, and that he has actually and legally practiced veterinary medicine in either private practice or public service in the state of Montana for at least five (5) years, immediately preceding his appointment. If no nominees are legally before him from the society, the governor may appoint from licensed and registered members of the veterinary profession in good standing in Montana without restriction. The governor may, after due notice and hearing, remove any examiner for misconduct, incapacity, or neglect of duty.

History: En. Sec. 1, Ch. 82, L. 1913; re-en. Sec. 3217, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

66-2202. (3218) **Organization of board — quorum — powers.** Every veterinary medical examiner shall receive a certificate of appointment

from the governor, and, before beginning his term of office, shall file with the secretary of state the constitutional oath of office. The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold at least two (2) regular meetings each year. At any meeting three (3) members of the board shall constitute a quorum. If any member of the board shall, without cause, absent himself from two (2) of its regular meetings consecutively, his office shall be deemed vacant. The board is hereby authorized and empowered: to promulgate, revise, alter, and amend and enforce reasonable rules, regulations and orders which it determines in its discretion to be necessary to the performance of its duties; to prescribe forms for application for examination and license; to prepare and supervise examination of applicants for license to practice veterinary medicine; to obtain the services of professional examination agencies in lieu of its own preparation of such examinations; to issue and revoke licenses as hereinafter provided; to hold hearings, issue subpoenas, administer oaths and take testimony and proofs concerning all matters within its jurisdiction; to issue commissions to take depositions of witnesses who are sick or absent from the state; to employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court; to employ attorneys or other qualified persons to serve as referees in the holding of hearings ordered by the board.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R. C. M. 1921; amd. Sec. 2, Ch. 90, L. 1955.

Amendment

The 1955 amendment inserted the words "at least" between the words "hold" and "two" in the second sentence; substituted the words "three (3) members of the board" for "a majority" in the third sentence and substituted the last sentence for two former sentences which read: "The board may take testimony and proofs concerning all matters within its jurisdiction. The board may make all by-laws and rules not inconsistent with law needed in performing its duties."

66-2203. (3219) **Expenses and funds—records and reports.** Each member of the board shall be entitled to receive all necessary traveling and subsistence expenses, provided such expenses shall not exceed the amount in the treasury during any fiscal year. The secretary-treasurer shall receive an additional salary to be fixed annually by the board and not to exceed five hundred dollars ($500.00) per annum. The board shall require the secretary-treasurer to give bond in such sum and with such conditions as the board may from time to time direct. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of five thousand dollars ($5,000.00). If, at any time, the amount of moneys received, after deducting such salaries and expenses, shall amount to more than five thousand dollars ($5,000.00), the secretary-treasurer shall forward the amount in excess of five thousand dollars ($5,000.00) to the treasurer of

the state of Montana, and receive his official receipt for same. Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve (12) months immediately preceding.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955.

Amendment

The 1955 amendment in the first sentence substituted the word "subsistence" for "incidental"; in the second sentence inserted the word "annually" between the words "fixed" and "by" and substituted "five hundred dollars" for "one hundred and fifty dollars"; in the third sentence substituted "The board shall require the secretary-treasurer to" for "The secretary-treasurer shall"; in the fifth sentence substituted "five thousand dollars" for "one thousand dollars" and after the word "dollars" deleted the words "which shall constitute a trust fund to be used, besides salaries and other expenses of the board, in carrying on prosecutions under the provisions of this act" and in the sixth sentence substituted "five thousand dollars" for "one thousand dollars" and "the amount in excess of five thousand dollars" for "the same."

66-2204. (3220) **Applications for license to practice—examinations—fees.** Any citizen of the United States who is over the age of twenty-one (21) years desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars ($25.00), which fee shall in no case be refunded, and which shall become a part of the funds of the treasury of the board. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medicia [medica] and therapeutics, livestock sanitaton, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars ($25.00), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

66-2207. (3223) **Issuance, registration and reinstatement of licenses.** The state board of veterinary medical examiners will, at the conclusion of a regular examination or after investigation under reciprocity arrangements as provided by section 66-2208, if in their judgment the applicant is duly qualified therefor, issue a license to practice veterinary medicine.

Every license so granted by the board shall be issued under seal, and shall be signed by the president and secretary-treasurer of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and all other matters required by law, and that after full examination or investigation under reciprocity arrangements he or she has been found duly qualified to practice.

Each person licensed by the board to practice veterinary medicine in this state shall procure from the secretary of the board on or before July first, annually, his certificate of registration. Such certificate shall be issued by the secretary upon the payment of a fee to be fixed annually by the board, not exceeding the sum of ten dollars ($10.00), and certificate so issued shall be prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued. Failure of a person licensed by the board to procure a certificate of registration on or before July first of every year shall ipso facto constitute a forfeiture of the license held by such person, provided, however, that any person who has thus forfeited his license may have it restored to him by making written application for restoration within one (1) year of such

forfeiture setting forth the reasons for failure to procure the certificate of registration at the time specified by this section and accompanied by payment of the registration fee hereinabove set forth and such additional restoration fee not to exceed ten dollars ($10.00) as the board may require. Such person so making application for restoration of license within one (1) year of its forfeiture by him shall not be required to submit to examination.

Notwithstanding any other provisions in this chapter, any person licensed by the board who enters, or is called to active duty by, any branch of the armed services of the United States shall be entitled to receive automatic registration of his license during the period of his duty with the armed services, provided, however, that within one (1) year after release or discharge from duty in such armed services he shall procure a certificate of renewal from the board and pay the regular fee therefor. Failure of such person to procure such certificate of renewal within one (1) year after such release or discharge shall be the equivalent of a failure to procure a certificate of registration on or before July first of any year, and the same forfeiture and restoration requirements shall be invoked.

Each person licensed by the board shall at all times have his residence and office address on file with the board.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R. C. M. 1921; amd. Sec. 5, Ch. 90, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

66-2208. (3224) **Display of license and certificate—arrangement with other boards.** No person shall practice veterinary medicine in the state of Montana without possessing and displaying prominently in his or her principal office a license and a current and valid certificate of registration issued pursuant to the provisions of this act. The board of veterinary medical examiners may make arrangement with similar boards in the several states insofar as practicable, whereby due credit for state and territorial licenses will be allowed in the state of Montana to such licensees of said board as desire to secure license to practice veterinary medicine in this state, and whereby licensees of the board of veterinary medical examiners in this state will secure due credit for license issued by said board, whenever such licensees desire to secure license to practice in any other state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states. The board shall by regulation establish methods and procedures for investigation of applicants for license by reciprocity, and no license shall be issued as a result of reciprocity between the states to any applicant unless such applicant has been lawfully and continuously in practice as a licensed veterinarian for at least one (1) year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R. C. M. 1921; amd. Sec. 6, Ch. 90, L. 1955.

Amendment

The 1955 amendment substituted the first sentence for one which read "Every person practicing veterinary medicine or veterinary surgery in the state of Montana, or representing himself as so practicing, shall display or cause to be displayed conspicuously in his or her usual place of business, license or certificate of registration issued to him or pursuant to the provisions of this act"; at the beginning of the second sentence substituted "The board of veterinary medical examiners may" for "The board of examiners shall"; deleted the words "or surgery" which appeared after the words "veterinary medicine" in the second sentence and added the last sentence.

66-2209. (3225) **Veterinary medicine defined.** Any person shall be deemed in the practice of veterinary medicine when he does any of the following:

(a) Represents himself as or is engaged in the practice of veterinary medicine in any of its branches either directly or indirectly.

(b) Uses any words, titles, or letters in such connection or upon any display or advertisement or under any circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) Diagnoses, prescribes or administers any drug, medicine, appliance, application, or treatment of whatever nature, or performs a surgical operation or manipulation, for the prevention, cure, or relief of a pain, deformity, wound, fracture, or bodily injury or physical condition or disease of animals.

(d) Instructs, demonstrates or solicits, by any notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and any and all remedies for the treatment of internal parasites in animals.

No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana unless licensed by the state board of veterinary medical examiners of the state of Montana, and registered as required by this chapter; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R. C. M. 1921; amd. Sec. 7, Ch. 90, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent valume.

66-2210. (3226) **Refusal, suspension, and revocation of license and certificate.** The state board of veterinary medical examiners may either refuse to issue a license or refuse to issue a certificate of registration or suspend or revoke a license and certificate of registration upon any of the following grounds:

(a) Fraud or deception in procuring the license.

(b) The publication or use of any untruthful or improper statement, or representation with the view of deceiving the public, or any client or customer in connection with the practice of veterinary medicine.

(c) The conviction of a felony as shown by a certified copy of the record of the court of conviction.

(d) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit forming drugs; or conviction of a violation of any federal or state law relating to narcotic drugs.

(e) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.

(f) Gross malpractice, including failure to furnish to the board, upon written application by it, any report or information relating thereto.

(g) The employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.

(h) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates.

(i) Failure to keep one's premises in a clean and sanitary condition.

(j) Violation of any of the provisions of this act or of any of the rules, regulations or orders promulgated by the state board of veterinary medical examiners to carry out the provisions of this chapter.

(k) Revocation by proper authorities for any of the above reasons of a license issued by a sister state.

The board may neither refuse to issue a license or certificate of registration nor suspend or revoke any license and certificate of registration, however, for any such cause, unless the person accused has been given at least twenty (20) days' notice in writing of the charge against him, and a public hearing by the board is first had.

Such hearing shall be held by the board or by a referee appointed by the board; and the board or its duly authorized referee is hereby authorized to administer oaths, subpoena witnesses and compel the production of relevant books and papers and receive evidence in order to carry out the provisions of this act.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R. C. M. 1921; amd. Sec. 8, Ch. 90, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

66-2211. (3227) **Interpretation of statute—persons not embraced within provisions.** This chapter does not apply to:

(a) Veterinarians in the performance of their official duties, either civil or military, in the service of the United States of America, unless they engage in the practice of veterinary medicine, as defined in this chapter, in a private capacity.

(b) Laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of the state of Montana, or United States of America and engaged in labors in laboratories under the direct supervision of the Montana livestock sanitary board, Montana state college or the United States of America.

(c) Lawfully qualified veterinarians from other states or any foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation.

(d) Any veterinarian residing on a border of a neighboring state and duly authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state, but who does not open an office or appoint a place to meet patients or receive calls within this state, provided that veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state.

(e) The employment of veterinary medical students who have successfully completed three (3) years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees as assistants to veterinarians licensed and registered pursuant to this chapter; provided, however, such employment shall not be contracted for or entered into except after written application for approval directed to the board of veterinary medical examiners and the written grant of approval by said board; and provided, further, such employment shall not be for a period in excess of six (6) months from the date of completion of such third year of study.

The operations known and designated as spaying, castrating or dehorning of large animals shall not be considered the practice of veterinary medicine within the meaning of this chapter.

Nothing in this chapter shall be construed or interpreted to prohibit any person from treating his own farm animals or being assisted in such treatment by his employees regularly employed in the conduct of his business, or by other persons whose services are rendered gratuitously in case of emergency.

Nothing in this chapter shall be construed or interpreted to prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R. C. M. 1921; amd. Sec. 9, Ch. 90, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

66-2212. (3228) Practice in violation of law—penalties. Any person practicing veterinary medicine or farriery within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter, or after his license to practice has been suspended or revoked, or contrary to the provisions of this chapter in any manner, shall be guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state, and upon conviction shall be punished by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both said fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R. C. M. 1921; amd. Sec. 10, Ch. 90, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Separability Clause

Section 11 of Ch. 90, Laws 1955 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

Repealing Clause

Section 12 of Ch. 90, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section 66-2324. Registration required.
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66-2347. Practices to which act inapplicable.

66-2301 to 66-2323. Repealed.

Repeal

These sections (Secs. 1-23, Ch. 284, L. 1947), relating to the regulation of civil engineers and land surveyors, were repealed by Sec. 27, Ch. 150, Laws 1957. For new provisions see 66-2324 to 66-2347.

66-2324. Registration required. That in order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity, practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and from and after the first day of January, 1958, it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in this act, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor, unless such person has been duly registered under the provisions of this act.

History: En. Sec. 1, Ch. 150, L. 1957.

Title of Act

An act to regulate the practices of engineering and land surveying; to safeguard

life, health, and property, and to promote the public welfare; providing for the registration of qualified persons as professional engineers and land surveyors, and providing for the certification of engineers-in-training; defining the terms "engineer," "professional engineer," "engineer-in-training," "practice of engineering," "land surveyor," and "practice of land surveying"; creating a state board of registration for professional engineers and land surveyors and providing for the appointment of its members; fixing the term of the board; defining its powers and duties; setting forth the minimum qualifications and other requirements for registration; making the administration of this act self supporting by establishing fees with expiration and renewal requirements; exempting certain groups; and providing for the enforcement of this act and penalties for its violation, and repealing sections 66-2301 through 66-2323 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

66-2325. Short title. This act shall be known and may be cited as the Montana Professional Engineers' Registration Act.

History: En. Sec. 2, Ch. 150, L. 1957.

66-2326. Definitions. The term "engineer" as used in this act shall mean a professional engineer as hereinafter defined.

The term "professional engineer" within the meaning and intent of this act shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

The term "engineer-in-training" as used in this act shall mean a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development or its successor as an agency evaluating professional engineering curricula, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects as provided in section 15 [66-2338] of this act, and who shall have received from the board, as hereinafter defined, a certificate stating that he has successfully passed this portion of the professional examinations.

The term "practice of engineering" within the meaning and intent of this act shall mean any professional service or creative work requiring engineering education, training, and experience and the application of such special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment, or communication lines or signal circuits, or electric power lines or pipelines.

The term "land surveyor" as used in this act shall mean a person who engages in the practice of land surveying as hereinafter defined.

The practice of land surveying within the meaning and intent of this act includes surveying of areas for their correct determination and descrip-

tion and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof.

The term "board" as used in this act shall mean the state board of registration for professional engineers and land surveyors provided for by this act.

History: En. Sec. 3, Ch. 150, L. 1957.

66-2327. Board—members—term. A state board of registration for professional engineers and land surveyors is hereby created whose duty it shall be to administer the provisions of this act. The board shall consist of five professional engineers, who shall be appointed by the governor. No more than two members shall be from the same branch of the profession of engineering. All board members shall have the qualifications required by section 5 [66-2328].

The members of the first board shall be appointed within ninety days after the passage of this act. Two members of the first board shall be members of the previous civil engineer board, and shall serve for one and two year terms respectively. The other appointments to the first board shall be for the terms of three, four, and five years respectively, or until their successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duty. Each member of the board first appointed hereunder shall receive a certificate of registration under this act from said board. On the expiration of the term of any member, the governor shall appoint for a term of five years a registered professional engineer, having the qualifications required by section 5 [66-2328], to take the place of the member whose term on said board is about to expire. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified. A member of the board may be appointed to succeed himself.

History: En. Sec. 4, Ch. 150, L. 1957.

66-2328. Board—qualifications. Each member of the board shall be a citizen of the United States and a resident of this state, and shall have been engaged in the practice of engineering for at least twelve years, and shall have been in responsible charge of important engineering work for at least five years. Responsible charge of engineering teaching may be construed as responsible charge of important engineering work.

History: En. Sec. 5, Ch. 150, L. 1957.

66-2329. Board—compensation and expenses. Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed twenty-five dollars ($25.00) per day. In addition thereto, each member shall be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this act.

History: En. Sec. 6, Ch. 150, L. 1957.

66-2330. Board—removal of members—vacancies. The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

History: En. Sec. 7, Ch. 150, L. 1957.

66-2331. Board—organization—meetings. The board shall hold a meeting within thirty days after its members are first appointed, and thereafter shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules and regulations of the board may provide. Notice of all meetings shall be given in such manner as the rules and regulations may provide. The board shall elect annually the following officers: A chairman, a vice-chairman, and a secretary. A quorum of the board shall consist of not less than three members.

History: En. Sec. 8, Ch. 150, L. 1957.

66-2332. Board—powers. The board shall have the power to adopt and amend all rules and regulations and rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The board shall adopt and have an official seal.

In carrying into effect the provisions of this act, the board, under the hand of its chairman and the seal of the board may subpoena witnesses and compel their attendance, and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court, setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person, requiring his attendance before such authority and there to testify or to produce such books, papers, and documents, as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the said court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.

History: En. Sec. 9, Ch. 150, L. 1957.

66-2333. Professional engineers' fund—receipts and disbursements—secretary—assistants. The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate fund to be known as the "professional engineers' fund." Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrants drawn by the state auditor, upon claims filed and approved as required by law. All moneys in the "professional engineers' fund" are hereby specifically appropriated for the use of the board. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on

said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "professional engineers' fund." The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 6 [66-2329]. The board may appoint an assistant secretary or executive secretary or may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act, including the expenses of the board's delegates to annual conventions of, and membership dues to, the national council of state boards of engineering examiners. Under no circumstances shall the total amount of warrants issued by the state auditor in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as herein provided.

History: En. Sec. 10, Ch. 150, L. 1957.

66-2334. Records and reports—register. The board shall keep a record of its proceedings and a register of all applicants for registration, which register shall show (a) the name, age, and residence of each applicant; (b) the date of the application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) the branch or branches of engineering in which the applicant qualified; (f) whether or not an examination was required; (g) whether the applicant was rejected; (h) whether a certificate of registration was granted; (i) the date of the action of the board; and (j) such other information as may be deemed necessary by the board.

The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

Annually, as of June 30, the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the board, attested by affidavits of its chairman and its secretary.

History: En. Sec. 11, Ch. 150, L. 1957.

66-2335. Roster. A roster showing the names and places of business of all registered professional engineers and all registered land surveyors shall be published by the secretary of the board during the month of April of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the secretary of state, the clerk of each incorporated city and town and in the office of each county clerk and recorder within the state, and furnished to the public upon request.

History: En. Sec. 12, Ch. 150, L. 1957.

66-2336. Requirements for registration. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, or land surveyor, or for certification as an engineer-in-training, respectively:

(1) As a professional engineer:

a.—Graduation in an approved engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula; and a specific record of an additional four years or more of experience in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to practice engineering (in counting years of experience, the board at its discretion may give credit, not in excess of one year, for satisfactory graduate study in engineering), and by successfully passing an oral or written examination, or both, as the board may determine; or

b.—A specific record of eight years or more of experience in engineering work of a character satisfactory to the board, and successfully passing a written, or written and oral, examination designated to show that the applicant is competent to practice engineering; or

c.—A specific record of twelve years or more of lawful practice in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering and has had responsible charge of important professional engineering work for at least five years, and provided applicant is not less than thirty-five years of age.

(2) As an engineer-in-training:

a.—Graduation in an accredited engineering curriculum of four scholastic years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, and successfully passing a written examination in the basic engineering subjects; or

b.—A specific record of four years or more of experience in engineering work of a character satisfactory to the board, and successfully passing a written examination in the basic engineering subjects.

(3) As a land surveyor:

a.—Graduation from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, including the completion of an approved course in surveying; and an additional two years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying; or

b.—A specific record of six years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written, or written and oral, examination in surveying prescribed by the board; or

c.—A specific record of ten years or more of lawful practice in land surveying work of a character satisfactory to the board and provided applicant is not less than thirty years of age.

No person shall be eligible for registration as a professional engineer, or land surveyor, or certification as an engineer-in-training, who is not of good character and reputation.

In considering the qualifications of applicants, engineering teaching may be construed as engineering experience.

The satisfactory completion of each year of an approved curriculum in engineering in a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, without graduation, shall be considered as equivalent to a year of experience in section 13 (1) b and (2) b [this section]. Graduation in a curriculum other than engineering from a college or university of recognized standing may be considered as equivalent to two years of experience in section 13 (1) and (2) b [this section]; provided, however, that no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not in itself be deemed to be qualifying engineering experience.

Any person having the necessary qualifications prescribed in this act to entitle him to registration shall be eligible for such registration although he may not be practicing his profession at the time of making his application.

History: En. Sec. 13, Ch. 150, L. 1957.

66-2337. Application for registration—fees. Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be twenty dollars ($20.00), ten dollars ($10.00) of which shall accompany application, the remaining ten dollars ($10.00) to be paid upon issuance of certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be ten dollars ($10.00).

The fee for engineer-in-training shall be ten dollars ($10.00), which shall accompany the application and shall include the cost of examination and issuance of certificate. When certification as an engineer-in-training by another state, or any territory or possession of the United States, or of any country, is accepted as evidence of qualification, the fee for engineer-in-training in Montana shall be one dollar ($1.00). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of ten dollars ($10.00) shall be paid before issuance of certificate as a professional engineer.

The registration fee for land surveyors shall be ten dollars ($10.00), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor shall be thirty dollars ($30.00), ten dollars ($10.00) of which shall accompany the application, the remaining twenty dollars ($20.00) to be paid upon issuance of certificate.

Should the board deny the issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957.

66-2338. Examinations. When oral or written examinations are required, they shall be held at such time and place as the board shall determine. When examinations are required on fundamental engineering subjects (such as are ordinarily given in college curricula), the applicant shall be permitted to take this part of the professional examination prior to his completion of the requisite years of experience in engineering work, and satisfactory passage of this portion of the professional examination by the applicant shall constitute a credit for a period of ten years. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that he has passed the examination and that his name has been recorded as an engineer-in-training.

The scope of the examinations and the methods of procedure shall be prescribed by the board but, with special reference to the applicant's ability to design and supervise engineering works, so as to insure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing on examination may apply for re-examination at the expiration of six months and will be re-examined without payment of additional fee. Subsequent examinations will be granted upon payment of a fee to be determined by the board.

History: En. Sec. 15, Ch. 150, L. 1957.

66-2339. Certificates of registration—seal. The board shall issue a certificate of registration, upon payment of registration fee as provided for in this act, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this act. In the case of a registered engineer, the certificate shall authorize the "practice of engineering." In the case of an engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training." In the case of a registered land surveyor, the certificate shall authorize the "practice of land surveying." Certificates of registration and certificates as engineer-in-training shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman, and the secretary of the board under seal of the board.

The issuance of a certificate of registration by this board shall be prima facie evidence that the person named therein is subject to the responsibilities and entitled to all the rights and privileges of a registered professional engineer or of a registered land surveyor, while the said certificate remains unrevoked or unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Registered Professional Engineer," and/or "Registered Land Surveyor." Plans, specifications, plats, and reports prepared by a regis-

trant shall be stamped with the said seal when filed with public authorities, during the life of the registrant's certificate, but it shall be unlawful for any one to stamp or seal any documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

History: En. Sec. 16, Ch. 150, L. 1957.

66-2340. Expiration and renewals—fee. Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed; provided, however, that certificates issued after the effective date of this act and prior to January 1, 1958, shall expire December 31, 1958. It shall be the duty of the secretary of the board to notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of five dollars ($5.00) for either a professional engineer or land surveyor, or both. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten per cent for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

History: En. Sec. 17, Ch. 150, L. 1957.

66-2341. Persons presently registered as civil engineer and/or land surveyor. No person who heretofore has been duly registered as a civil engineer and/or land surveyor under the laws of Montana and whose registration has not been revoked shall be required to register again under this act, and his former registration shall be fully recognized under the provisions of this act. All certificates including those for engineer-in-training heretofore issued and not revoked shall have the same force and effect as if they had been issued under the provisions of this act, and shall be subject to the same rules, terms and conditions as are the certificates provided for in this act.

History: En. Sec. 18, Ch. 150, L. 1957.

66-2342. Present professional engineers—persons in military service. At any time within one year after this act becomes effective, upon application therefor and the payment of the registration fee of twenty dollars ($20.00), the board shall issue a certificate of registration, without oral or written examination, to any professional engineer, who shall submit evidence under oath satisfactory to the board that he is of good character, has been a resident of the state of Montana for at least one year immediately preceding the date of his application; and was practicing engineering in a branch of engineering other than civil engineering and land surveying, as defined in section 66-2303 of the Revised Codes of Montana,

1947, at the time this act became effective, and was performing engineering work of a character satisfactory to the board.

The board at its discretion may require applicants under this section to appear for personal interview.

After this act shall have been in effect one year, the board shall issue certificates of registration only as provided for in section 13 [66-2336] or section 22 [66-2345] hereof, except for individuals who are in the military service of the United States at the time this act becomes effective who were residents of this state at the time of entering such service, and who were practicing engineering immediately preceding or during said service, and have performed work of a character satisfactory to the board, for whom the provisions of this section shall apply at any time within one year after their respective honorable separations from said service.

Graduates of an approved engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula; who are in the military service of the United States at the time this act becomes effective, shall be certified as engineers-in-training without examination, upon application therefor and payment of the fee of ten dollars ($10.00) at any time within one year after honorable separation from such service.

For civil engineers or land surveyors the preceding applies, except that such individuals shall have been in the military service of the United States as of July 1, 1948, as was provided in section 66-2318, Revised Codes of Montana, 1947.

History: En. Sec. 19, Ch. 150, L. 1957.

66-2343. Engineering plans and specifications for public works. All engineering plans and specifications for public works of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the engineer responsible therefor.

History: En. Sec. 20, Ch. 150, L. 1957.

66-2344. Registration of persons registered by other states or authorities. The board may, upon application therefor, and the payment of a fee of ten dollars ($10.00), issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the national council of state boards of engineering examiners, or of the national bureau of engineering registration, or of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of this act and the rules established by the board.

History: En. Sec. 21, Ch. 150, L. 1957.

66-2345. Revocation of registration—hearings—re-issuance of certificate—appeals. The board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing, and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they shall have been preferred.

The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such registrant, at least thirty days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense.

If, after such hearing, three or more members of the board vote in favor of finding the accused guilty, the board shall revoke the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, providing three or more members of the board vote in favor of such re-issuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of three dollars ($3.00) shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the district court of the county in which such denial or revocation was made, and, after full hearing, said court shall make such decree sustaining or reversing the action of the board as to it may seem just and proper.

History: En. Sec. 22, Ch. 150, L. 1957.

66-2346. Violations—penalties—enforcement of act. Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of this act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or revoked certificate of registration, or any person who shall violate any of the provisions of this act, shall be guilty of misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or suffer imprisonment for a period not exceeding three months, or both.

It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this act and to prosecute any persons violating same. The attorney general of

the state or his assistant shall act as legal adviser of the board and render such legal assistance as may be necessary in carrying out the provisions of this act.

History: En. Sec. 23, Ch. 150, L. 1957.

66-2347. Practices to which act inapplicable. This act shall not be construed to prevent or to affect:

(a) The practice of any other legally recognized professions or trades.

(b) The mere execution of work by a contractor as distinguished from the planning or design thereof, or the supervision of the construction of such work as a foreman or superintendent; or

(c) The practice of a person not a resident of and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year; provided such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act; or

(d) The practice of a person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice engineering or land surveying herein for more than thirty days in any calendar year, if he shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this act; provided that such a person is legally qualified by registration to practice engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(e) The performance of professional engineering functions or work by a person who is an employee of or acts under the supervision and direction of a professional engineer, provided such person is not in responsible charge of such engineering work; or

(f) The practice of professional engineering by licensed architects where such practice is purely incidental to their practice of architecture, or

(g) The practice of officers and employees of the government of the United States while engaged within this state in the practice of engineering or land surveying, for said government, or

(h) The practice of professional engineering or land surveying in this state by a firm, co-partnership, corporation or joint stock association, or by its members, officers or employees on its behalf, provided each person in responsible charge of activities of the firm, co-partnership, corporation or joint stock association which constitutes such practice is a professional engineer or land surveyor respectively, holding a certificate of registration under this act.

History: En. Sec. 24, Ch. 150, L. 1957.

Separability Clause

Section 25 of Ch. 150, Laws 1957 read "If any section or sections of this act shall be declared unconstitutional or invalid, this shall not invalidate ay other sections of this act."

Repealing Clause

Section 26 of Ch. 150, Laws 1957 repealed all acts and parts of acts in conflict with this act.

Repealing and Savings Clause

Section 27 of Ch. 150, Laws 1957 read "Sections 66-2301 through 66-2323, Revised Codes of Montana, 1947, originating as chapter 284, Laws of the Thirtieth Legislative Assembly, 1947, shall be, and the same are repealed; provided, however, that this repeal shall not terminate or in any respect invalidate any licenses or certificates in full force and effect at the date this act becomes effective, and continued in full force and effect by the provisions of section 18 of this act."

Transfer of Funds

Section 28 of Ch. 150, Laws 1957 read "The balance of the money in the state treasury in the civil engineers' fund, as was provided for in section 66-2310, Revised Codes of Montana, 1947, shall upon the effective date of this act be transferred to the professional engineers' fund as provided in section 10 of this act."

TITLE 67—PROPERTY

Chapter 4. Conditions and limitations of ownership, 67-413.
10. Alien land law—Unconstitutional.
18. Uniform gifts to minors act, 67-1801 to 67-1811.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

67-302. (6674) Property of the state.

Compiler's Note

The official to the citation of United States v. Eldredge, 23 F Supp 337, 339 appearing in the parent volume on page 384 should read 33 F Supp 337, 339.

67-308. (6680) Joint interest defined.

References

Cited in State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 845.

CHAPTER 4—CONDITIONS AND LIMITATIONS OF OWNERSHIP

Section 67-413. Other directions—when void in part.

67-413. (6712) Other directions—when void in part. If the direction for an accumulation of the income of property is for a longer term than is limited in the last section (section 67-412, Revised Codes of Montana, 1947), the direction only, whether separable or not from the other provisions of the instrument, is void as respects the time beyond the limit prescribed in said last section, and no other part of such instrument is affected by the void portion of such direction.

History: En. Sec. 1163, Civ. C. 1895; re-en. Sec. 4470, Rev. C. 1907; re-en. Sec. 6712, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1957. Cal. Civ. C. Sec. 725. Field Civ. C. Sec. 207.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 144, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 144, Laws 1957, provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 6—SERVITUDES

67-601. (6749) Servitudes attached to land.

References

Cited in State v. McClure, 127 M 534, 268 P 2d 629, 635.

67-602. (6750) Servitudes not attached to land.

References

Cited in State v. McClure, 127 M 534, 268 P 2d 629, 635.

CHAPTER 10—ALIEN LAND LAW

(Unconstitutional—State v. Oakland, — M —, 287 P 2d 39, 42)

67-1001 to 67-1008. Unconstitutional.

Unconstitutional

The Alien Land Law, comprising sections 67-1001 to 67-1008 (Secs. 1 to 8, Ch. 58, L. 1923), is unconstitutional and void as being in contravention of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. State v. Oakland, — M —, 287 P 2d 39, 42.

CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY

67-1203. (6818) Prescription.

References

Cited in Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 378.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

67-1601. (6859) Requisites for transfer of certain estates.

Cross-Reference

Officer authorized to execute conveyances of real property by cities under commission-manager form of government, sec. 11-3286.

Collateral References

Effect on validity of instrument in form of deed or provisions therein indicating an intention to postpone or limit the rights of grantee until after the death of grantor. 31 ALR 2d 536.

Sufficiency of description in exception or reservation as to standing timber. 35 ALR 2d 1422.

Written matter as controlling printed matter in construction of deed. 37 ALR 2d 820.

67-1616. (6874) Implied covenants.

Delinquent Taxes

Where by warranty deed the "parties of the first part" grant unto the Northern Company the lands described therein, the grantors impliedly, under the statutes, covenanted that, at the time of the execution of the deed the lands were free from delinquent taxes. Such implied covenant could be sued upon as if expressly set out in the deed. Schuster v. Northern Co., 127 M 39, 257 P 2d 249, 252.

67-1617. (6875) What the term "encumbrances" embraces.

References

Cited or applied in Schuster v. Northern Co., 127 M 39, 257 P 2d 249, 252.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER

67-1703. (6879) Transfer of title under sale.

References

Cited or applied in De Mers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

CHAPTER 18—UNIFORM GIFTS TO MINORS ACT

Section 67-1801. Definitions.
67-1802. Manner of making gift.
67-1803. Effect of gift.
67-1804. Duties and powers of custodian.
67-1805. Custodian's expenses, compensation, bond and liabilities.

67-1806. Exemption of third persons from liability.
67-1807. Resignation, death or removal of custodian—bond—appointment of successor custodian.
67-1808. Accounting by custodian.
67-1809. Construction.
67-1810. Short title.
67-1811. Vested rights not to be impaired.

67-1801. Definitions. In this act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of twenty-one years.

(b) A "bank" is a bank, trust company, national banking association, savings bank, industrial bank.

(c) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(d) "Court" means the district courts of general jurisdiction in the state of Montana.

(e) "The custodial property" includes:

(1) all securities and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this act;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income.

(f) A "custodian" is a person so designated in a manner prescribed in this act.

(g) A "guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

(h) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(i) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(j) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(k) A "minor" is a person who has not attained the age of twenty-one years.

(l) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share,

voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(m) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities, or in the cancellation of surrendered securities.

(n) A "trust company" is a bank authorized to exercise trust powers in the state of Montana.

History: En. Sec. 1, Ch. 245, L. 1957.

NOTE.—Uniform State Law. Sections 67-1801 through 67-1811 constitute the "Uniform Gifts to Minors Act" approved by the National Conference of Commissioners on Uniform State Laws in 1956.

Title of Act

An act concerning gifts of securities and money to minors; to make uniform the law with reference thereto; providing for severability and repealing all acts and parts of acts in conflict herewith.

67-1802. Manner of making gift. (a) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person (an adult member of the minor's family, a guardian of the minor) or a trust company, followed, in substance, by the words: "as custodian for _____
(name of minor)
under the Montana Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor (an adult member, other than the donor, of the minor's family, a guardian of the minor) or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE MONTANA UNIFORM GIFTS TO MINORS ACT

I, _____, hereby deliver to _____ as custodian
(name of donor) (name of custodian)
for _____ under the Montana Uniform Gifts to Minors Act,
(name of minor)
the following security(ies):

(insert an appropriate description of the security or securities delivered sufficient to identify it or them.)

_____
(signature of donor)

_____ hereby acknowledges receipt of the above described
(name of custodian)

security(ies) as custodian for the above minor under the Montana Uniform Gifts to Minors Act.

Dated: _____

_____
(Signature of custodian)"

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person (an adult member of the minor's family, a guardian of the minor) or a bank with trust powers, followed in substance, by the words: "as custodian for _____ under the Montana Uniform
(name of minor)
Gifts to Minors Act."

(b) Any gift made in a manner prescribed in subsection (a) may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed in subsection (a) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

History: En. Sec. 2, Ch. 245, L. 1957.

67-1803. Effect of gift. (a) A gift made in a manner prescribed in this act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this act.

(b) By making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this act.

History: En. Sec. 3, Ch. 245, L. 1957.

67-1804. Duties and powers of custodian. (a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended,

the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this act.

(f) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for _____ under
(name of minor)
the Montana Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed, in substance, by the words: "as custodian for _____ under the Montana Uniform
(name of minor)
Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(i) A custodian has (and holds as powers in trust), with respect to the custodial property, in addition to the rights and powers provided in this act, all the rights and powers which a guardian has with respect to property not held as custodial property.

History: En. Sec. 4, Ch. 245, L. 1957.

67-1805. Custodian's expenses, compensation, bond and liabilities. (a) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(b) A custodian may act without compensation for his services.

(c) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(1) A direction by the donor when the gift is made;
(2) A statute of this state applicable to custodians;
(3) The statute of this state applicable to guardians;
(4) An order of the court.

(d) Except as otherwise provided in this act, a custodian shall not be required to give a bond for the performance of his duties.

(e) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this act.

History: En. Sec. 5, Ch. 245, L. 1957.

67-1806. Exemption of third persons from liability. No issuer, transfer agent, bank, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this act, or is obliged to inquire into the validity or propriety under this act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

History: En. Sec. 6, Ch. 245, L. 1957.

67-1807. Resignation, death or removal of custodian—bond—appointment of successor custodian. (a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become a successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this act.

(b) A custodian, other than the donor, may resign and designate his successor by:

(1) executing an instrument of resignation designating the successor custodian; and

(2) causing each security which is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for _____ under the (name of minor)
Montana Uniform Gifts to Minors Act"; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.

(c) A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

(d) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the district court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

History: En. Sec. 7, Ch. 245, L. 1957.

67-1808. Accounting by custodian. (a) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under this act or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

History: En. Sec. 8, Ch. 245, L. 1957.

67-1809. Construction. (a) This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(b) This act shall not be construed as providing an exclusive method for making gifts to minors.

History: En. Sec. 9, Ch. 245, L. 1957.

67-1810. Short title. This act may be cited as the "Montana Uniform Gifts to Minors Act."

History: En. Sec. 10, Ch. 245, L. 1957.

67-1811. Vested rights not to be impaired. Nothing in this act shall be construed to impair constitutionally vested rights.

History: En. Sec. 12, Ch. 245, L. 1957.

Separability Clause

Section 11 of Ch. 245, Laws 1957 read "If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Repealing Clause

Section 13 of Ch. 245, Laws 1957 repealed all acts and parts of acts in conflict therewith.

TITLE 68—PUBLIC EMPLOYEES RETIREMENT ACT

Chapter 1. Purpose of act—definitions, 68-102.
2. Retirement system created—who are members, 68-202, 68-203.
5. Board of administration—powers and duties, 68-501.
7. Management of retirement fund, 68-701.
8. Retirement—compulsory—voluntary, 68-801.
10. Reinstatement—reduction of allowance—optional modification of allowances, 68-1001 to 68-1003.
11. Death benefits, 68-1101.
13. Miscellaneous provisions, 68-1303, 68-1306, 68-1308.

CHAPTER 1—PURPOSE OF ACT—DEFINITIONS

Section 68-102. Definitions.

68-102. Definitions. The following words and phrases used in this act, unless a different meaning is plainly indicated in the context, shall have the following meanings:

(a) "Retirement system" shall mean the "public employees' retirement system" created by this act.

(b) "Contracting city" shall mean any municipal corporation in the state which has elected to have all, or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose.

(c) "Contracting county" shall mean any county in the state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to counties, wherever in this act reference is made to "city," "contracting city," "city employee," "city clerk," "municipal corporation," or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "county," "contracting county," "county employee," "county clerk," "county" or "board of county commissioners" of any county.

(d) "Public agency" shall mean any public district or other local authority supported in whole by public taxes.

(e) "Contracting public agency" shall mean any public agency in the state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to public agencies, whenever in this act reference is made to "city," "contracting city," "city employee," "city clerk," "municipal corporation," or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "public agency," "contracting public agency," "public agency employee," "secretary of governing board or analogous authorized employee of the public agency," "public agency," or "governing board or head of a public agency not managed by a board."

(f) "State employee" means any person employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor and from the fees or income of any department or agency of the state, excepting all elective and all appointive officers, court commissioners,

and the members of any state board or commission who serve the state intermittently and are paid on a per diem basis (except as herein otherwise provided). "State employee" means further any employee under direct state supervision or functional state supervision as certified by the head of the state department concerned and approved by the board of administration of the public employees' retirement system, who is paid either fully or in part from federal funds, but is not subject to the federal retirement system.

(g) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the state board of examiners, state auditor and state treasurer for payment.

(h) "Member" shall mean any person included in the membership of the retirement system set forth in section 68-202 and not excluded in section 68-203.

(i) "Board" shall mean the "board of administration" created in this act.

(j) "Retirement fund" shall mean the "public employees' retirement fund" created and established in section 68-405.

(k) "State service" shall mean service rendered as an employee, hired or appointed, of the state or its university or any of the colleges, schools, components or units thereof for the purpose of this act, service rendered as an employee of any contracting city for compensation, and, for the purposes of this act, a member shall be considered as being in "state service" only while he is receiving compensation from the state, or its university as aforesaid or the contracting city for such service, except as provided in subdivision (f) of section 68-501.

(l) "Prison employee" for the purpose of the retirement system, means persons appointed by the warden of the state prison or by the state board of prison commissioners.

(m) "Prior service" shall mean all state service rendered before the first day of July, 1945; and all state service rendered as an employee of a contracting city before the effective date of the city's participation in the retirement system, and allowable as provided in subdivision (h), section 68-501. Employees of a contracting city shall receive credit for prior service only if the election of the contracting city to participate in the public employees' retirement act is filed with the board on or before, but not after July 1, 1950. Notwithstanding the sentence preceding, "prior service" as applied to a person, employed by the state, including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or as applied to a person who became a member prior to said amendments, because of a change in the employment status to a full time basis, shall mean all state service rendered before the effective date of said membership.

(n) "Continuous service" as applied to "prior service" shall mean all prior service, regardless of interruptions in such service, and as applied to service as a member shall mean uninterrupted employment in state service except as provided by subdivision (h) section 68-501, and, except

that when for any cause whatever, a member discontinues state service but subsequently re-enters such service within three (3) years from the date of the discontinuance, such interruption shall not be deemed to break the continuity of service.

(o) "Beneficiary" shall mean any person in receipt of a pension, annuity, retirement allowance, death benefit or any other benefit provided by this act.

(p) "Compensation" shall mean the remuneration paid in cash out of funds controlled by the state, the university or the contracting city, plus the monetary value as determined by the board of administration, of living quarters, board, lodging, fuel, laundry and other advantages of any nature furnished by the state, the university, or the contracting city to a member, in payment for services.

(q) "Compensation earnable" by a member shall mean the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, it being assumed that during any absence said member was in the position held by him at the beginning of the absence: and provided that compensation received by a member subsequent to July 1, 1952, in excess of five thousand dollars ($5,000.00) per annum may be used as a basis of compensation for the purpose of this retirement system if (a) he contributes normal contributions on the excess of such salary subsequent to July 1, 1952, over five thousand dollars ($5,000.00) to his individual account in the annuity savings fund and (b) he contributes three per cent (3%) of the excess of his salary subsequent to July 1, 1952, over five thousand dollars ($5,000.00) to the pension accumulation fund of the retirement system.

(r) "Final compensation" shall mean the average annual compensation earnable by a member during any three (3) consecutive years upon which normal contributions have been made, said years to be chosen by the member.

(s) "Regular interest" shall mean the average interest earned on investments made hereunder, compounded at each June thirtieth, subject to subdivision (j) section 68-501 plus such additional interest as the board may credit from year to year in accordance with the provisions of this act.

(t) "Normal contributions" shall mean contributions by members under the provisions of section 68-701 (g) to (n), both inclusive.

(u) "Additional contributions" shall mean contributions by members under the provisions of section 68-701(k).

(v) "Accumulated normal contributions" shall mean the sum of all the normal contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(w) "Accumulated additional contributions" shall mean the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(x) "Accumulated contributions" shall mean accumulated normal contributions plus any accumulated additional contributions standing to the credit of a member's account.

(y) "Pension" shall mean payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting cities from the funds of such cities, as provided in this act.

(z) "Annuity" shall mean payments for life derived from contributions made by a member as provided in this act.

(aa) "Retirement allowance" shall mean the pension plus the annuity.

(ab) "Death allowance" shall mean payments for life, or until remarriage, or until the youngest child shall attain the age of eighteen (18) years, as provided in section 68-1101.

(ac) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board, and interest at a rate to be annually determined by the retirement board compounded annually, subject to subdivision (j), section 68-501.

(ad) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this act.

(ae) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, shall mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(af) "Actuary" shall mean the actuary regularly and continuously employed on a full or part time basis, by the board of administration.

(ag) "Benefit" shall be the retirement allowance, death allowance, death benefit or refund of accumulated contributions provided by this act.

(ah) "Fiscal year" shall mean any year commencing with July first and ending June thirtieth next following.

History: En. Sec. 2, Ch. 212, L. 1945; amd. Sec. 1, Ch. 297, L. 1947; amd. Sec. 1, Ch. 186, L. 1951; amd. Sec. 1, Ch. 92, L. 1955.

Amendment

The 1955 amendment in subd. (d) substituted the words "supported in whole by public taxes" for the words "or public body whatsoever"; in subd. (f) deleted the words "in a state office or regularly" which appeared between the words "person" and "employed," before amendment the statement in parentheses "(except as herein otherwise provided)" appeared between the words "appointive" and "officers," deleted the words "but including the president and all deans, professors and instructors in every department, college, and school of the university of Montana" which appeared after the word "basis," inserted the words "of administration" after the word "board" and deleted two former paragraphs which read "Temporary employees shall not be eligible to membership. All permanent and probationary employees shall become members on the first day of employment, and proper deductions shall be made from the salaries of such employees beginning on the first day of employment. Upon completion of six (6) consecutive months of service temporary employees shall be deemed permanent employees for the purpose of this act, and proper deductions shall be made from the salaries of such employees on the first day following the completion of such six (6) months' consecutive service. Permanent seasonal employees shall in no event be considered temporary employees." In subd. (m) substituted the words "'Prior service' shall mean all state service rendered before the first day of July, 1945"; for the words "'Prior service' shall mean all state service, or service to a contracting city, rendered before the first day of January, 1945; and all service rendered as an employee of the university before the same date"; in subd. (q) substituted the proviso clause for the words "and that prior to entering state service he was in the position first held by him in such service, but such 'compensation earnable' shall not exceed four hundred sixteen dollars and sixty-six cents ($416.66) per month" and deleted subd. (ai).

Subdivision (f)

The legislature by using the words "excepting as herein otherwise provided" has provided a means for all elective officers and all persons directly appointed by the governor to become members of the system through section 68-203. Corwin v. Bieswanger, 126 M 337, 251 P 2d 252, 253.

CHAPTER 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

Section 68-202. Members—re-entry into state service—school district employees.
68-203. Who are ineligible to membership in system.

68-202. Members—re-entry into state service—school district employees. (a) From and after July 1, 1955. All employees shall become members on the first day of employment.

(b) Every employee who re-enters state service shall become a member unless he has had an original election of exemption from membership and his state service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon re-entry.

(c) Time during which an employee of a school district is absent from state service during official vacation shall be counted as service in determining eligibility for membership under this act.

History: En. Sec. 4, Ch. 212, L. 1945; amd. Sec. 2, Ch. 186, L. 1951; amd. Sec. 2, Ch. 92, L. 1955.

Amendment

The 1955 amendment substituted the present subd. (a) for a former introductory clause and subd. (a) which read "Except as herein expressly excluded from membership all employees shall become members of the retirement system as follows: (a) All permanent and probationary employees shall become members on the first day of employment. Temporary employees shall be deemed permanent employees upon the completion of six (6) consecutive months of service, and such employees shall become members on the first day following the completion of such six (6) consecutive months of service."

References

Cited in Corwin v. Bieswanger, 126 M 337, 251 P 2d 252, 253.

68-203. Who are ineligible to membership in system. The following employees shall not become members of the retirement system:

(a) Elective officers, other than elective officers who filed with the board of administration an election in writing to become members; provided, that any person so excluded from membership, who later becomes a member hereof, shall have the option of making contributions to the retirement system in the amount which he would have contributed had he not been so excluded, and he shall then receive credit for prior service in the same manner as if he had not been so excluded. If he shall affirmatively exercise the option, the contributions of the state, or the contracting city because of his membership, shall be the same as they would have been had he not been so excluded.

(b) Inmates of state institutions who are allowed compensation for such service as they are able to perform.

(c) Persons in state institutions principally for the purpose of training, but who receive compensation.

(d) Independent contractors who are not employees.

(e) Employees serving on a part time basis unless such employees are members at January 1, 1946, or any time of employment after that date on a part time basis, or unless such employment is regular and continuous and in the opinion of the employing power will extend for more than one (1) year, and requires service for at least one-half (½) the time required of employees in the same group or class, serving on a full time basis. Any employee who is a member at January 1, 1946, and who is serving on a part time basis not requiring at least one-half (½) the time required of employees in the same group or class serving on a full time basis, may elect to terminate his membership in the system. Any employee so selecting shall be considered as permanently separated from state service, solely for the purposes of section 68-701(m).

(f) Persons in state service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members, provided any person so excluded from membership by his own election may on or before, but not after, July 1, 1948, file with the board of administration an election to become a member and receive credit for prior service, and shall become a member of the retirement system on the date of filing such election. Such person shall receive credit for prior service only if his election to become a member is filed with the board on or before, but not after July 1, 1948, and shall have the option of paying to the retirement system all or part of the amount which he would have contributed had he not been so excluded but had been a member to and including the date of filing such election to become a member, plus interest which would have accumulated thereon through such date. Upon the retirement of such person under section 68-801, the pensions provided by contributions of the state under this act shall be the same as if such person affirmatively exercised the option to pay to the retirement system all of that amount with accumulated interest.

(g) Persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members.

(h) Persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances. Any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of section 68-701 (m) as permanently separated from state service. The accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-1101. Contributions to the retirement fund under

section 68-1307 on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the fund from which said contributions were made. For the purpose of this section, persons who merely are receiving pensions or retirement allowances, or other payments, from any source whatever, on account of service rendered to some other agency than the state and when such persons were not in state service, shall not be considered, because of such receipt, members of any other retirement or pension system.

(i) Appointive members of boards and commissions who serve the state or contracting agency on an intermittent basis, and who are paid on a per diem basis.

(j) Persons who become public employees under the meaning of this act after they have reached their sixtieth birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members.

History: En. Sec. 5, Ch. 212, L. 1945; amd. Sec. 2, Ch. 297, L. 1947; amd. Sec. 3, Ch. 92, L. 1955.

Amendment

The 1955 amendment added subds. (i) and (j).

Membership

As to elected officers and persons directly appointed by the governor the Public Employees' Retirement Act provides that they may elect to become members by complying with the provisions of subdivisions (a), (f) and (g) hereof. Corwin v. Bieswanger, 126 M 337, 251 P 2d 252, 253.

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

Section 68-501. Board of administration.

68-501. Board of administration. The board of administration shall consist of five (5) members appointed by the governor, three (3) of which members shall be public employees and shall be members of the retirement system, and two (2) of which shall be members at large. Terms of office shall be for five (5) years provided, however, that those first appointed after this act takes effect shall be for terms, respectively, of one (1), two (2), three (3), four (4), and five (5) years but their successors shall hold office for terms of five (5) years; provided not more than one (1) employee member of the retirement board shall be an employee of the same department, bureau or agency of the state or contracting public agency. Members of the board shall be paid their actual and necessary expenses and those members of the board who are not members of the public employees' retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of ten dollars ($10.00) per day.

The attorney general is hereby designated legal counsel for the board.

(a) Vacancy on board—how filled. Any vacancy occurring ninety (90) days or more before the expiration of the term of any member of the retirement board shall be filled by appointment by the governor. The person thus appointed shall serve for the remainder of the unexpired term.

(b) The board may establish such rules and regulations as it deems proper, within the limitations of this act and for its proper administration,

operation and enforcement. The board shall elect one (1) of its members president, and shall appoint and fix the compensation of a secretary who shall have the power to administer oaths, and other necessary employees. It shall maintain its office in the city of Helena. A quorum of the board shall be three (3) members. The board may appoint a committee of one or more of its members, which shall have authority to perform routine acts, such as retirement of members and fixing of retirement allowances, approval of death claims and correction of records necessary in the administration of the system in accordance with the provisions of this act and rules and regulations of the board. All expenses of the administration of this act in excess of amount provided by the one dollar ($1.00) membership fee shall be a charge on the appropriation made from the general fund of the state.

(c) The board shall determine who are employees within the meaning of this act and shall be the sole authority and judge under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system, and shall have exclusive control of the administration and investment of the fund. As soon as practical after the close of each fiscal year, the board shall file with the governor a report of its work for such fiscal year.

(d) Subject to the following and to all other provisions of this act, and such rules and regulations as it may adopt in pursuance thereof, the board shall determine and may modify allowances for service and disability.

(e) The board of administration shall fix and determine how much service rendered in any fiscal year shall be the equivalent of a year of service and parts thereof, but shall credit one (1) year for two hundred and fifty (250) or more days of service rendered by employees on a per diem basis and one (1) year for ten (10) months or more of service rendered by employees on a monthly basis, but not more than one (1) year for all service in any fiscal year. In determining the credit to be granted for service rendered on a part time basis, for purposes of calculating retirement allowances, the service shall be reduced to a full time basis according to the service required, in the next preceding sentence, for credit for one (1) year of service. In calculating benefits based on service so determined, except in calculating the additional pension provided in subdivision (g) of section 68-901 compensation earnable shall be taken as the compensation which would be earnable if the employment had been on a full time basis, and with a compensation derived by multiplying the member's compensation by ratio of full time to the time he was required by his employment to engage in his duties. In calculating the credit to be granted for service rendered on a part time basis, for purposes of determining qualifications for retirement, and of calculating benefits payable upon death before retirement, the service required in this paragraph for credit for a year of service shall not be used, but instead, a year of service shall be credited for each year during which the member was employed throughout the year on a part time basis and was engaged in his duties the full amount of time he was required by his employment to be so engaged. Credit for fractional years will be granted to the extent of the

fraction derived by dividing the time during which the member was engaged in his duties within the year, by the time he was required by his employment to be so engaged.

(f) Time during which a member is absent from public service without compensation shall not be allowed in computing service; except that time during which a member is absent from public service by reason of having been ordered on duty with the armed forces of the United States, or by reason of voluntary service by the member in said forces or on ships operated by or for the United States government, either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter shall be considered as time spent in public service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless the member elects to contribute and contributes under the retirement system. Any member so absent and until his return within the said ninety (90) days may resign from the system. Any members so absent shall have the right to contribute to said system, either during his service with the armed forces of the United States or in the merchant marine of the United States, and ninety (90) days thereafter or upon his return to the state service, at times and in a manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence. If he does so contribute he shall receive credit for public service for such time in the same manner as if he had not been absent from public service. Whenever a member elects to continue his contributions, the state or the contracting city, or county or other agency shall thereupon contribute an amount equal to that which it would have contributed under section 68-1307 or under the contract between the board and the legislative body, as the case may be, if the member had not been absent from state service.

Any member so absent or any member absent from state service by reason of having been ordered by an authorized official of the state of Montana or the United States, to duties outside state service shall be paid upon his request, his accumulated contributions. Such payment shall terminate any election by said member under this section to contribute.

Time during which a member is absent from public service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment, shall be considered as spent in public service, for the purpose of qualification for retirement and death benefits, but not for the calculation of retirement benefits, except as he received compensation, as defined in this act and as distinguished from disability indemnity under the workmen's compensation act during the absence, and then only to the extent of compensation received.

(g) Each employee shall file with the board of administration such information affecting his status as a member of the retirement system as the board may require.

(h) Credit for prior service shall be granted to each person other than persons who are employees of the university or of a contracting city at

the time of becoming members of the retirement system, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service. Credit for prior service shall be granted to each person who is employed by the university at the time of becoming a member of the retirement system regardless of whether he had been retired under the system prior to the effective date hereof, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service.

Credit for prior service shall be granted to each person who is employed by a contracting city at the time of becoming a member of the system, who has rendered such service as defined in this act, and who has become a member of the retirement system within three (3) years after last rendering prior service. Notwithstanding the three (3) sentences next preceding, credit for prior service shall be granted to each person employed by the state including the university, who became a member while employed on a part time basis, because of amendments to this retirement act, or who became a member prior to said amendments, because of a change in status to a full time basis. The credit for prior service to be granted persons employed by a contracting city who are included under the retirement system shall be established by contract between the board and the legislative body of such city; and such credit as may be granted to a person shall be in the form of a percentage, not to exceed the analogous percentage applicable to employees of the state, for each year of prior service. Prior service so credited shall be the basis for a retirement allowance or benefit as provided in this act only if the membership in the retirement system continues unbroken until retirement or retirement allowance or until the granting of such other benefit; provided, that termination of membership by withdrawal of accumulated contributions followed by the redeposit of such contributions upon re-entrance into public service as herein provided shall not constitute a break in membership, but this section shall not be construed to entitle any person to credit as prior service for time during which he was not in public service as defined in this act.

Credit for any prior service, not previously granted, shall be granted to a member upon request for retirement provided that the member has a total of not less than ten (10) years of creditable state service of which not less than three (3) years have been as a contributing member of the retirement system and the retirement allowance does not include credit for all state service prior to July 1, 1945, or in the case of a contracting city prior to the date of the contract, or July 1, 1947, whichever is earlier. Proper certification of such service must be furnished.

(i) The management and control of the retirement system shall be vested in the board of administration, and it shall exercise the following powers and perform the following duties:

(j) The board of administration shall keep in convenient form such data as shall be necessary for the actuarial valuation of the retirement fund created by this act. On July 1, 1946, and at the end of every two-year

period thereafter, it shall cause to be made an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries under the provision of this act, and shall further cause to be made an actuarial valuation of the assets and liabilities of the public employees' retirement fund herein created, and from time to time shall determine the rate of interest being earned on the said retirement fund. Upon the basis of any or all of such investigation, valuation, and determination, said board shall adopt such mortality, service and other tables and such interest rate, in lieu of the interest rate specified herein, or any of such items as it shall deem necessary, and shall make such revision in rates of contributions of members as it may deem necessary to comply with the provisions of section 68-701. No adjustment shall be included in the new rates for time prior to the effective date of such revision.

(k) The board shall credit contributions of members of the state and contracting cities with interest at the rate being used under the system on the effective date hereof, compounded each June 30, subject to the foregoing subdivision (j) of section 68-501. At the end of each fiscal year, beginning with the second fiscal year of the operation of the retirement system, it may credit to all contributions held in the retirement fund on June 30 of the then current fiscal year, such interest in excess of said rate provided herein as it may deem proper in the light of the earnings of the retirement fund during such fiscal year, but such additional interest credited during any fiscal year shall not be greater than the excess of said earnings over the interest otherwise credited to contributions during that year. Interest at said rate, compounded annually, subject to said foregoing subdivision (j) hereof, shall be used in the calculation of benefits under any mortality table adopted by the board, regardless of any additional interest allowed on contribution under this paragraph.

In addition to other records and accounts, it shall keep such records and accounts as may be necessary to show at any time:

The total accumulated contributions of members.

The total accumulated contributions of retired members less the annuity payments made to such members.

The accumulated contributions of the state and of contracting cities held for the benefit of members on account of service rendered as members of the retirement system.

All other accumulated contributions of the state and of contracting cities which shall include the amounts available to meet the obligation of the state and of the contracting cities, respectively on account of benefits that have been granted to retired employees and on account of prior service of members.

(l) In addition to rendering the annual report to the governor required by subsection (c) of this section, it shall cause to be published annually a financial statement showing an actuarial valuation of the assets and liabilities of the retirement system created by this act and a statement as to the accumulated cash and securities in the retirement fund as certified by the state auditor, but until all prior service is verified, the board of administration may omit from the financial statement published annually, assets and liabilities resulting from such prior service, and may include

assets and liabilities on account of service rendered as members in amounts equal only to accumulated contributions held on account of such service.

History: En. Sec. 14, Ch. 212, L. 1945; amd. Sec. 5, Ch. 297, L. 1947; amd. Sec. 4, Ch. 186, L. 1951; amd. Sec. 1, Ch. 224, L. 1951; amd. Sec. 1, Ch. 225, L. 1953; amd. Sec. 4, Ch. 92, L. 1955.

Amendment

The 1955 amendment in subd. (h) substituted the third paragraph for two former paragraphs which read "Credit for prior service shall be granted to all persons who have been at any time since July 1, 1945, or who may at any time hereafter become members or employees of the state or of a contracting city, contracting county, public agency or contracting public agency, notwithstanding any other provisions of the Public Employees' Retirement Act, as amended or supplemented; subject however, to the following conditions: namely, that any such person desiring to qualify for the benefits of the act must contribute to the pension accumulation fund of the public employees' retirement system for the purpose of accomplishing such qualification, an amount which shall be based on age and sex at the time of original membership, and upon the compensation earnable by such person during the month preceding the separation of such person from the state service. The time of original membership is hereby defined as the date when any such person elects to become a member of the public employees' retirement system. Provided that credit for prior service shall be granted to all retired members for all state service rendered prior to January 1, 1945, notwithstanding the date of participation of the contracting public agency in the public employees' retirement system or any other limitation or provision of the Public Employees' Retirement Act." In subd. (k) substituted the words "on June 30" for "at June 30th."

Subd. (h) Retroactive

Under the amendment by chapter 224 of Laws 1951, subsection (h) is retroactive and a person who retired in 1949 is entitled to a credit for his service prior to January 1, 1945 and his increase in the retirement pension would be from the date of his retirement not just the date that chapter 224 of Laws 1951 went into effect. Davidson v. Love, 127 M 366, 264 P 2d 705. (See, however, dissenting opinion, 127 M 366, 264 P 2d 705, 708.)

CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

Section 68-701. Management of retirement fund.

68-701. Management of retirement fund. The retirement fund shall be managed as follows:

(a) The board of administration shall have exclusive control of the administration of said fund except as otherwise provided.

(b) The said fund shall be invested by the state board of land commissioners as part of the long term investment fund.

(c) The board of administration shall deposit monthly in the state treasury all amounts received by it as provided in this section and section 68-1307.

(d) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the state board of land commissioners as to the investment thereof. All payment from said fund shall be made by him only upon vouchers signed by two (2) board members designated by the board of administration. A duly attested copy of a resolution of the board of administration designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the board of administration.

(e) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the said fund shall be paid into said fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during said year shall be retained in said fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(f) Except as herein provided, no member and no employees of the board of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains of profits accruing therefrom. And no member or employee of the said board directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits, nor shall any such member or employee in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an indorser or surety as to, or in any manner an obliger for investments by the board.

(g) The normal rates of contribution of members shall be based on sex and the age at the nearest birthday at the time of entrance into the retirement system. The normal rates of contribution shall be such as will provide an average annuity at age sixty-five (65) equal to one one hundred-fortieth (1/140) of the final compensation of members, according to the tables adopted by the board, for each year of service rendered after entering the system. Nothing in this section shall prevent the adoption of one (1) schedule of rates for males and one (1) schedule for females.

(h) The actual amount of annuity receivable by any member upon retirement shall be the actuarial equivalent of his accumulated contributions, as provided in subdivisions (a) and (k) of section 68-1307.

(i) From and after July 1, 1955, the board of administration shall certify to the head of each office or department of the state and to the registrar of the university the normal rate of contribution as provided in this act for each member in such office, department, or the university, respectively. The head of each office or department of the state shall apply such rate of contribution to the compensation of each member, and shall certify to the state auditor on each and every payroll the amount to be contributed and shall furnish immediately to the board of administration a copy of each and every such payroll; and each such amount shall be deducted by the head of each office or department and shall be remitted to the board. The registrar of the university shall apply the rate of contribution certified to him by the board to the compensation of each member employed by the university and the contributions so determined shall be deducted by the registrar of the university from the compensation of each such member; each such amount shall be remitted to the board and the registrar of the university shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of

all claims and demands whatsoever for the service rendered by members during the period covered by such payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

(j) From and after July 1, 1955, the board of administration shall certify to the city clerk, or other officer designated by the legislative body, of each contracting city the rate of contribution as provided in this act for each member included under the retirement system respectively. The city clerk, or other officer, shall apply the rate of contribution certified to him by the board to the compensation of each member included in the retirement system and the contribution so determined shall be deducted by the city clerk, or other officer, from the compensation of each such member; each such amount shall be remitted to the board and the city clerk or other officer, shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims to the benefits to which they may be entitled under the provisions of this act.

(k) Subject to the rules and regulations to be established and promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in subsection (i) and (j) of this section of this act, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting city any additional financial obligation. The provisions of subdivision (f) and (g) of section 68-203 shall apply also to additional contributions. The board, upon application shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contributions.

(l) In addition to the contributions hereinbefore provided to be paid by employees who are members of the retirement system created by this act, every such employee shall pay an annual membership fee of one dollar ($1.00) which amount, together with other moneys appropriated for that purpose, shall be used for the support of the board of administration.

(m) From and after July 1, 1955, should the state service of a member be discontinued otherwise than by death or retirement, he shall after the date of discontinuance, be paid such part of his accumulated contributions as he demands. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered state service, all or part of his accumulated normal contributions if after a previous discontinuance of state service he withdrew all or part of his accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in subsection (n).

Any member with ten (10) or more years of service, whose service is discontinued otherwise than by death or retirement, shall have the right to elect within ninety (90) days after such termination of service, and without right of revocation, whether to allow his accumulated contributions to remain in the retirement fund. Upon the qualification for retire-

ment by reason of age or disability of a member who has elected to allow his accumulated contributions to remain in the retirement fund, he shall receive a retirement allowance in accordance with the provisions of section 68-901, exclusive of subparagraph (g) of section 68-901.

(n) Any member may redeposit in the retirement fund, in one sum or in not to exceed twelve (12) monthly or twenty-four (24) semimonthly payments, an amount equal to that which he withdrew therefrom at the last termination of his membership, subject to minimum monthly or semimonthly payments as fixed by the board of administration. If a member, upon re-entering the retirement system after a termination of his membership, does not elect to make or, having so elected, subsequently does not make such redeposit, he shall re-enter as a new member without credit for any service except the prior service credited to him before said termination, and the rate of his contribution for future years shall be the normal rate provided for in this act at his age of re-entrance; otherwise his rate of contribution for future years shall be the same as his rate prior to the last termination of his membership, and his membership shall be the same as if unbroken by such last termination. Regardless of whether such redeposit is made, the documents held by the retirement system as executed by said member prior to termination of membership shall be held by the system for the same purposes as prior to said termination, and beneficiaries nominated in such documents shall continue unchanged until changed as provided herein.

(o) The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 18, Ch. 212, L. 1945; amd. Sec. 6, Ch. 297, L. 1947; amd. Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955.

Amendment

The 1955 amendment inserted at the beginning of subds. (i) (j) and (m) the phrase "From and after July 1, 1955," deleted the words "so much of" and "as does not exceed four hundred sixteen dollars and sixty-six cents ($416.66), per month" which appeared twice in subd. (i) and once in subd. (j); in subd. (m) deleted from the end of the first sentence an exception clause which read "except that if a member is credited with less than ten (10) years of state service and, in the opinion of the board of administration is permanently separated from state service by reason of such discontinuance, he shall be paid forthwith ninety per centum (90%) of his accumulated contributions without interest," in the second paragraph of subd. (m) substituted the words "right of revocation" for the words "right or revocation" and added subd. (o).

CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

Section 68-801. Voluntary service retirement.

68-801. Voluntary service retirement. (a) Retirement of a member for service shall be made by the board of administration upon his attaining the age of sixty (60) years or more and upon his completion of ten (10) or more years of public service credited under this act and the filing of his written application to the board, subject to the provisions of section 68-901.

(b) Notwithstanding any other provision of this act, any person who has been retired for service (as distinguished from disability) under the provisions of this act may be employed in state service in accordance with the laws governing such service in the same manner as a person who has not been so retired.

(c) Any person so employed shall be considered as reinstated from retirement and his retirement allowance shall be cancelled forthwith. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at the time of such reinstatement, and his rate of contribution for future years shall be the same as if he had continued in state service during the period of his retirement. Such person shall receive credit for prior service in the same manner as if he had never been retired.

History: En. Sec. 19, Ch. 212, L. 1945; amd. Sec. 7, Ch. 297, L. 1947; amd. Sec. 5, Ch. 186, L. 1951; amd. Sec. 1, Ch. 35, L. 1955.

Amendment

The 1955 amendment substituted the present subd. (a) for the former one which read "(a) From and after July 1, 1947, until January 1, 1951, every member other than elective officers and officers appointed directly by the governor shall be retired on the first (1st) day of the calendar month next succeeding that in which he attains the age of seventy-five (75) years. Elective officers and officers appointed directly by the governor who have elected to become and are members of the system may continue to serve in office for the duration of the term for which elected or appointed. Every employee of the university who becomes a member, and who, at the time of becoming such member has attained the age of seventy-five (75) years, shall be retired forthwith. On and after January 1, 1951, every member who at that time has attained the age of seventy (70) years, shall be retired forthwith, and thereafter every such member must be retired on the first (1st) day of the calendar month next succeeding that in which he attains the age of seventy (70) years"; in subd. (b) deleted the words "until October 1, 1947, or the termination of the war in which the United States is now engaged, whichever is earlier," which appeared between the words "act" and "any" and at the end of subd. (b) after the word "retired" deleted the following words "upon the determination of the board of administration, by medical examination, that he is not incapacitated for the duties proposed to be assigned to him." The 1955 amendment also deleted former subds. (d) and (e) for text of which see parent volume.

CHAPTER 10—REINSTATEMENT—REDUCTION OF ALLOWANCE—OPTIONAL MODIFICATION OF ALLOWANCES

Section 68-1001. Reinstatement from disability retirement.
68-1002. Reduction of allowance when employed.
68-1003. Effect of refusal of beneficiary to submit to medical examination.

68-1001. Reinstatement from disability retirement. (a) The board of administration, may, at its pleasure, require any disability beneficiary to undergo medical examination. Such examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of said beneficiary or other place mutually agreed upon. Upon the basis of such examination the board shall determine whether said disability beneficiary is still incapacitated, physically or mentally, for service in the office or department of the state or of the contracting city, where he was employed and in the position held by him when retired for disability, or for duties proposed to be assigned to him. If the board of administration determines that said beneficiary is not so incapacitated, his retirement allowance shall be cancelled forthwith. If he was an employee of the state

or of the university, he shall be reinstated to the position held by him when retired for disability or to a position in the same classification with duties within his capacity. If he was an employee of a contracting city, the board shall notify the proper official of said city that said disability has been terminated and that said person is eligible for reinstatement to duty. The fact that said person was retired for disability shall not prejudice any right to reinstatement to duty which he may have or claim to have.

(b) In the case of such a member who is an employee of a contracting city, and who for any reason is not so reinstated or is not re-employed by said city in a position subject to the retirement system, he shall be paid an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but said amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability.

(c) Should a disability beneficiary re-enter the state service and be eligible for membership in the retirement system in acordance with section 68-202, his retirement allowance shall be cancelled and he shall immediately become a member of the retirement system, his rate of contribution for future years being that established for his age at the time of such re-entry. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but such amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability. Such member shall receive credit for prior service in the same manner as though he had never been retired for disability.

History: En. Sec. 21, Ch. 212, L. 1945; amd. Sec. 6, Ch. 92, L. 1955.

Amendment

The 1955 amendment deleted the words "under the age of sixty (60)" which appeared between the words "beneficiary" and "to" in the first sentence.

68-1002. Reduction of allowance when employed. Should a disability beneficiary engage in a gainful occupation not in the state service or should he re-enter the state service in a capacity ineligible for membership in the retirement system, the board of administration shall reduce the amount of his monthly pension to an amount which, when added to the compensation earned monthly by him in such occupation, shall not exceed the amount of his monthly compensation at the time of his retirement. Should the earning capacity of such beneficiary be further altered, the board may further alter his pension to an amount which shall not exceed the amount upon which he was originally retired, but which, subject to such limitation, shall equal, when added to the compensation earned by him, the amount of his compensation at the time of his retirement.

History: En. Sec. 22, Ch. 212, L. 1945; amd. Sec. 7, Ch. 92, L. 1955.

Amendment

The 1955 amendment deleted the words "prior to attaining age sixty (60)" which appeared between the words "beneficiary" and "engage" in the first sentence and also deleted a former last sentence which read "When such a disability beneficiary reaches age sixty (60), his retirement allowance shall be made equal to the amount upon which he was originally retired, and shall not again be modified for any cause."

68-1003. Effect of refusal of beneficiary to submit to medical examination. Should any disability beneficiary refuse to submit to medical examination, his pension may be discontinued until his withdrawal of such refusal, and should such refusal continue for one (1) year his retirement allowance may be cancelled.

History: En. Sec. 23, Ch. 212, L. 1945; amd. Sec. 8, Ch. 92, L. 1955.

Amendment

The 1955 amendment deleted the words "under age sixty (60)" which appeared between the words "beneficiary" and "refuse."

CHAPTER 11—DEATH BENEFITS

Section 68-1101. Death benefit.

68-1101. Death benefit. Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which if there is a surviving wife or surviving children under eighteen (18) years of age, shall be paid in monthly installments and to the surviving wife and children as presented therein; otherwise such death benefit shall be paid to his estate, or to such person having an insurable interest in his life as he has nominated by written designation duly executed and filed with the retirement board; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, Revised Codes of Montana, 1947, as amended, or (b) who has received a disability retirement allowance as provided for in paragraphs (i) through (l) of section 68-901, Revised Codes of Montana, 1947, as amended, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

(a) His accumulated contributions, and in addition thereto,

(b) An amount, provided from contributions by the state, or by a contracting city, which shall be equal to one-twelfth (1/12th) of the annual compensation earnable by the deceased during the twelve (12) months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty (50) per centum of such compensation.

(c) A member, or a beneficiary after death of a member, may elect, by written designation, duly executed and filed with the board of administration to have the death benefit provided in clauses (a) and (b) paid in monthly installments, fixed in number or amount, all subject to such rules and regulations as the board may adopt. Regular interest shall be credited on the unpaid balance of such benefit, at rates then in use under the system as adopted by the board from time to time.

(d) If compensation is awarded by the industrial accident board of the state of Montana by reason of a finding that the member's death resulted from injury or disease arising out of or in the course of employment,

the death benefit payable hereunder shall be limited to a refund of the member's accumulated contributions. In any case where the industrial accident board makes a determination that death of a state employee resulted from injury or disease arising out of and in the course of employment and pays compensation therefor, the industrial accident board shall certify its findings and determination to the board of administration of the public employees' retirement system.

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions; and provided that this provision be retroactive for all members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

(f) The beneficiary named in (e) above shall have the right within ninety (90) days of the member's death to elect to receive a death benefit instead of the benefit designated in (e) above.

History: En. Sec. 26, Ch. 212, L. 1945; amd. Sec. 7, Ch. 186, L. 1951; amd. Sec. 2, Ch. 225, L. 1953; amd. Sec. 9, Ch. 92, L. 1955.

Amendment

The 1955 amendment substituted the words "joint life annuity option" for the words "lesser optional retirement allowance" in the proviso clause of the first paragraph and inserted the word "a" between the words "to" and "refund" in the first sentence of subd. (d).

CHAPTER 13—MISCELLANEOUS PROVISIONS

Section 68-1303. Retirement fund exempt from execution, garnishment, attachment or assignment.
68-1306. Retired members not eligible for retirement allowance while in state service.
68-1308. Maximum salary considered.

68-1303. Retirement fund exempt from execution, garnishment, attachment or assignment. The right of a person to a pension, an annuity or a retirement allowance to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

History: En. Sec. 30, Ch. 212, L. 1945; amd. Sec. 10, Ch. 92, L. 1955.

Amendment

The 1955 amendment inserted a "comma" after the word "pension" the second time it appears, changed the word "provision" to "provisions" and inserted the words "state or municipal taxes" between the words "attachment" and "or."

68-1306. Retired members not eligible for retirement allowance while in state service. No person who has been retired for service or disability shall be paid any retirement allowance during the time which he receives compensation for service rendered by him to the state or to a contracting city after the date of his retirement.

History: En. Sec. 33, Ch. 212, L. 1945; amd. Sec. 11, Ch. 92, L. 1955.

Amendment

The 1955 amendment substituted the words "disability shall be paid any retirement allowance during the time which he receives compensation for service" for the words "disability and who receives a retirement allowance under the retirement system shall be paid for service."

68-1308. Maximum salary considered. From and after July 1, 1955, for the purpose of computing the total amounts of compensation of members under the provisions of section 68-1307, all compensation shall be used.

History: En. Sec. 36, Ch. 212, L. 1945; amd. Sec. 12, Ch. 92, L. 1955.

Amendment

The 1955 amendment inserted the phrase "From and after July 1, 1955" at the beginning of this section and substituted the words "all compensation shall be used" for the words "the compensation of every member who received in excess of four hundred sixteen dollars and sixty-six cents ($416.66) per month shall be computed as four hundred sixteen dollars and sixty-six cents ($416.66) per month."

Separability Clause

Section 13 of Ch. 92, Laws 1955 read "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision, or part directly adjudged to be invalid, inoperative or unconstitutional."

Repealing Clause

Section 14 of Ch. 92, Laws 1955 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 15 of Ch. 92, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

TITLE 69—PUBLIC HEALTH AND SAFETY

Chapter 1. State board of health—creation—powers and duties, 69-105, 69-105.4, 69-127.
2. Industrial hygiene, 69-201.
3. Tuberculosis control, 69-301.
4. Dental health, 69-401, 69-403, 69-404.
5. Vital statistics, 69-502, 69-506, 69-519.
7. County boards of health and county health officers—duties, 69-701.
9. State epidemiologist—employment and powers, 69-901.
11. Venereal disease control, 69-1101, 69-1102.
13. Public and other water supplies—control by state board of health, 69-1326 to 69-1341.
27. Fireworks regulation, 69-2701.
28. Refrigerated lockers—regulation of, 69-2802 to 69-2805, 69-2807, 69-2808, 69-2810, 69-2813.
30. Montana hospital survey and construction act, 69-3002 to 69-3004, 69-3006, 69-3007, 69-3009, 69-3010, 69-3012, 69-3015, 69-3016, 69-3018.
32. State board of health—maternal and child health services—educative program—school nurses—supervision by board—authority of counties and school boards—services for crippled children—education for children and adults in use and abuse of narcotics, 69-3201 to 69-3205.
33. Geophysical exploration, 69-3301 to 69-3308.

CHAPTER 1—STATE BOARD OF HEALTH—CREATION—POWERS AND DUTIES

Section 69-105. Functions, powers and duties of board.
69-105.4. Laboratory services.
69-127. Persons subject to epileptic type seizures—report of physicians required—recommendations as to licensing persons to drive.

69-105. (2448) **Functions, powers and duties of board.** The state board of health of the state of Montana (which may, for brevity, be referred to as the state board of health) shall have general supervision of the interests of health and life of the citizens of the state. The board shall continuously study the vital statistics of the state, and endeavor to make intelligent use of the records of births, deaths and sickness among the people; it shall make sanitary investigations and inquiries regarding the causes of disease, and especially communicable diseases and epidemics; the causes of mortality, and the effects of localities, employments, conditions, ingesta, habits, and other factors and circumstances affecting the health of the people; it shall gather such information in respect to all these matters as it may deem proper for diffusion among and use by the people; it shall cause to be made an inspection at least once in each year, and at such other times as it may be directed to do so by the governor, of all public institutions of the state of Montana, and make a report as to their sanitary conditions and environment, with suggestions and recommendations to the governor and to their respective boards of directors or trustees, visitors, officers and administrators for amelioration or abatement of conditions and factors adverse to health, and for correction, betterment and improvement in circumstances or practices affecting health, at such institutions; and it shall be the the duty of the executive officers and administrators, and other persons in the immediate charge of such institutions to furnish all the facilities necessary for a thorough investigation and inspection at such institutions; the board shall, when requested, or

when it shall deem best, advise officers of the government, or other boards within the state, in regard to location, drainage, water supply, disposal of excreta, heating, plumbing, sewerage systems, and ventilation of any public institution or building; it shall have general oversight and direction of the enforcement of the statutes respecting the preservation of the health and the prevention of the spread of communicable diseases; it shall have general supervision of the work of local and county board of health, hereinafter defined, and it shall, at the opening of each session of the legislative assembly, submit to the assembly, through the governor, a full report of all of its investigations, and such suggestions and recommendations which result from such investigations, and, also, such additional information and recommendations in the matter of public health in this state, as it shall deem proper.

The state board of health shall as a board exercise all powers and all duties found, conferred, prescribed or delegated, in any of the codes, session laws, and statutes of the state of Montana, which are, or have been delegated to the state board of health, as such, or which are, or have been, delegated, or assumed to be delegated, to any division, director or chief of division, bureau, or other functional unit, appointee, or employee, of the board, by acts of the legislative assembly, and all divisions, sections, units, directors, appointees and employees of the board shall exercise authority at all times in subordination to, and in compliance with, the orders and directives of the board in its administration of such laws, functions, powers and duties. The state board of health, as such is hereby charged with the responsibility of exercising the powers and functions, and discharging, executing and carrying out the duties, heretofore, or at any time hereafter, delegated to it by the legislative assembly, but nothing herein contained shall prevent the board from assigning the execution of its powers and duties, in specified detail, to its appointees and employees, subject at all times to the continuing control of the board. To the end of efficient administration, the board shall have power to direct the necessary internal organization of all employees, appointees, and functional divisions, units, and sections of the board. The board shall properly and effectively integrate and coordinate all personnel and services under its jurisdiction, in accord with efficient administrative, professional and technical practices, without regard to the title of persons, positions or functional divisions, sections or units which may have heretofore been authorized or recognized; provided, however, that nothing in this act shall be construed (a) as authorizing the exercise of powers or the discharge of duties not delegated to the board by act of the legislative assembly, or reasonably implied from delegated powers, or (b) as authorizing the board to create, establish or set up functions not delegated to it by acts of the legislative assembly. In all cases where the terms "divisions," "section" or "unit" of the board is referred to in the laws of this state, such terms shall be construed as referring to functions and powers of the board, and not to any numerical subdivision among the members of the board, or, in any case, to appointees, or employees of the board.

History: Ap. p. Sec. 2, p. 81, L. 1901; amd. Sec. 2, Ch. 110, L. 1907; Sec. 1475, Rev. C. 1907; re-en. Sec. 2448, R. C. M. 1921; amd. Sec. 1, Ch. 264, L. 1955. Cal. Pol. C. Sec. 2979.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

69-105.4. Laboratory services. The state board of health is hereby authorized and directed to organize and administer such laboratory services as it deems necessary to carry out any duties and responsibilities in the field of public health which have been delegated to it by the legislative assembly of Montana; and for such purposes to provide equipment, facilities, and qualified personnel, the technical qualifications of which personnel the board shall determine and, as may be permitted from time to time within appropriations by the legislative assembly. The laboratory services shall be organized so as to provide for technical procedures in the fields of bacteriology, serology, chemistry, and toxicology, with particular reference to subjects under the board's powers as assigned to it by the laws of Montana including water supplies, sewage and waste disposal, foods, drugs, poisons, insecticides, fungicides, rodenticides, industrial hygiene, communicable disease and other diseases or conditions which may from time to time afflict mankind in the state of Montana and be susceptible to control, suppression or eradication, or require study and analysis to determine the existence of circumstances which are, may be, or are alleged to be, detrimental to health.

History: En. Sec. 2, Ch. 264, L. 1955.

69-106. (2449) **Repealed.**

Repeal

This section (Sec. 3, Ch. 110, L. 1907), relating to meetings of the state board of health, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

69-108. (2451) **Repealed.**

Repeal

This section (Sec. 7, Ch. 110, L. 1907), relating to compensation and expenses of members of the state board of health, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

69-127. Persons subject to epileptic type seizures—report of physicians required—recommendations as to licensing persons to drive. Whenever a physician or other practitioner authorized to diagnose epilepsy or epileptic type seizures treats or attends any person diagnosed as being subject to epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic, said physician or other practitioner shall report the full name, address, sex and date of birth of the person so diagnosed immediately to the local health officer in writing. The local health officer shall in turn forward such reports to the executive officer of the state board of health not later than Saturday of each week. The executive officer of the state board of health shall forward the reports to the Montana highway patrol board at least once each month. The executive officer of the state board of health may make recommendations to the said board as to the licensing of the person or persons so reported to drive or operate motor vehicles on the public highways of the state of Montana and said officer may require the reported person to authorize a doctor who is familiar with such case to forward a certificate or case report to the executive officer of the state board of health, or require that a physical examination be made by a medical

doctor designated by the executive officer of the state board of health and forwarded to the executive officer of the state board of health within ten (10) days. The person reported as being subject to such seizures or lapse of consciousness or control may himself or herself cause a written report concerning his or her affliction or disability to be forwarded to the executive officer of the state board of health by a doctor of his choice. All reports required by this section shall be confidential and used by the board solely to determine the qualifications of such persons to operate motor vehicles upon the highways of this state.

History: En. Sec. 1, Ch. 59, L. 1955.

Title of Act

An act relating to the duty of physicians and other practitioners to report to the local health officer every person who is diagnosed as being subject to epileptic type seizures or similar disorders characterized by lapse of consciousness or control; providing for the local health officer to forward such reports to the executive officer of the state board of health; providing for the executive officer of the state board of health to forward such reports to the Montana highway patrol board; providing that all such reports are confidential; repealing all acts or parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 59, Laws 1955 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 59, Laws 1955 provided the act should be in effect from and after July 1, 1955.

CHAPTER 2—INDUSTRIAL HYGIENE

Section 69-201. Industrial hygiene.

69-201. Industrial hygiene. The state board of health, as such, shall possess, exercise and administer all of the powers, functions and authority, and shall carry out, discharge and execute all of the duties, in the field of industrial hygiene, as set forth in sections 69-202, 69-203, 69-204, 69-205, 69-206, 69-207, and 69-208, Revised Codes of Montana, 1947. The expression in such sections "division of industrial hygiene" is hereby defined to mean the state board of health of the state of Montana, as a board, in the field of industrial hygiene as prescribed by said sections.

History: En. Sec. 1, Ch. 127, L. 1939; amd. Sec. 3, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

CHAPTER 3—TUBERCULOSIS CONTROL

Section 69-301. Tuberculosis control.

69-301. Tuberculosis control. The state board of health is hereby invested with the function of studying and collecting all relevant data pertaining to the appearance and incidence of tuberculosis within this state, and with promulgating such measures and practices as may make for its control, and the recovery of persons afflicted thereby, and to such ends, the board shall possess, exercise, and administer all of the powers, and shall carry out, discharge and execute all of the duties, in the field of tuberculosis control, as set forth in section 69-303, Revised Codes of Montana, 1947. The board shall appoint a technically trained and competent person

who shall exercise the functions and carry out the duties assigned to him by the board in compliance with its orders, rules and regulations.

History: En. Sec. 1, Ch. 170, L. 1945; amd. Sec. 4, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

69-302. Repealed.

Repeal

This section (Sec. 2, Ch. 170, L. 1945), relating to the appointment of a state director of tuberculosis control, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

CHAPTER 4—DENTAL HEALTH

Section 69-401. Dental health.
69-403. Duties, director of dental health.
69-404. Rules and regulations by state board of health.

69-401. Dental health. The state board of health is hereby directed and authorized to develop and administer a program of dental public health. The state board of health shall appoint a full-time director of dental health, qualified as prescribed by section 69-402, Revised Codes of Montana, 1947, and who shall be under its direct supervision. The state board of health shall also provide such other staff and facilities as are needed in carrying out the purposes of this act.

History: En. Sec. 1, Ch. 125, L. 1943; amd. Sec. 5, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

69-403. Duties, director of dental health. The duties of the director of dental health shall be the development and promotion of those activities which result in the protection and improvement of the dental health of the people of the state.

History: En. Sec. 3, Ch. 125, L. 1943; amd. Sec. 6, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted "director" for "division."

69-404. Rules and regulations by state board of health. The state board of health shall adopt rules and regulations for the proper administration of this act. The state board of health through the director of dental health shall have supervision over the dentists employed by municipalities, counties, health departments, school districts and state institutions.

History: En. Sec. 4, Ch. 125, L. 1943; amd. Sec. 7, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted "director" for "division"; inserted the words "health departments"; and substituted "state institutions" for "custodial institutions."

CHAPTER 5—VITAL STATISTICS

Section 69-502. Vital statistics functions of board.
69-506. Duties of state registrar.
69-519. Accounting for fees.

69-502. Vital statistics functions of board. The state board of health shall, as one of its functions:

(1) Establish and identify an apropriate organizational unit under the board with the proper personnel, equipment and office space, to gather, collect, register, record, compile, preserve, analyze, use and make available for public use, vital statistics, as defined, and as set forth and referred to, in sections 69-501 through 69-539, inclusive, Revised Codes of Montana, 1947, except that the expression "Bureau of Vital Statistics," as used in any of said sections may be changed by the board, in establishing and identifying such organizational unit;

(2) Install a statewide system of vital statistics;

(3) Make and may amend necessary regulations, give instructions and prescribe forms for gathering, collecting, registering, recording, compiling, preserving, using and making use of public vital statistics;

(4) Have charge and be the official custodian of all the files and records gathered under the provisions of said sections 69-502 through 69-539, Revised Codes of Montana, 1947, and as the same may be amended and supplemented; and

(5) Enforcing this act, and the regulations made pursuant thereto.

History: En. Sec. 2, Ch. 44, L. 1943; amd. Sec. 8, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

69-506. Duties of state registrar. The state registrar shall, under such rules and regulations as the board may prescribe keep and have immediate charge and custody, for the board, and subject to complete access by it at any time, its files and records in the field of vital statistics, aid the board in the enforcement of this act and the rules and regulations promulgated by it and in supervising local registrars and other persons required to comply with this act. The state registrar shall prepare for the board a biennial report of the administration of this act, in such detail and form as the board may prescribe.

History: En. Sec. 6, Ch. 44, L. 1943; amd. Sec. 9, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

69-519. Accounting for fees. The state board of health shall designate one (1) or more employees who shall, subject to the continuing supervision of the board, keep, in such detail and form as the board may prescribe, an account of all fees received, and remit such fees to the state treasurer in accordance with the laws of Montana. The board shall charge one (1) of such employees with primary responsibility for the receipt of, accounting for, and remittance of such fees, and the employees so designated with primary responsibility shall give a fidelity bond to the state of Montana, with corporate surety which bond and surety shall be approved by the board, in the penal sum of three thousand dollars ($3,000.00) for the proper keeping, accounting and remittance of all such fees. Other designated employees may be required by the board to give to the state of Montana

similar bonds in such lesser amounts as the board may deem proper and adequate.

History: En. Sec. 19, Ch. 44, L. 1943; amd. Sec. 10, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

CHAPTER 7—COUNTY BOARDS OF HEALTH AND COUNTY HEALTH OFFICERS—DUTIES

Section 69-701. County boards of health.

69-701. (2473) **County boards of health.** There is hereby established in each county a board of health which is designated in this act as the "County Board of Health," which shall consist of the board of county commissioners and one physician legally authorized to practice medicine and surgery in this state, who must be appointed by the board of county commissioners. Said physician when so appointed shall be ex-officio secretary of the county board of health and the county health officer, and shall hold office at the pleasure of the board. The county health officer shall have the same powers and perform the same duties in the county of his appointment, outside of the limits of incorporated towns or cities, as are hereinabove provided for a local health officer within the corporate limits of a town or city, and his salary shall be fixed by the board of county commissioners at an amount commensurate to the work devolving upon him, and when such county health officer, in the actual discharge of his official duties, is required to travel greater than two (2) miles from the county seat of the county he represents, he shall receive his actual traveling expenses. Said board may also, when in its judgment the interests of the county require, appoint a deputy county health officer who shall be located at a point where he can serve people residing in a portion of said county in a manner appropriate to their needs. The boards of county commissioners of two (2) or more adjacent counties may also, when in their opinion the needs of the people of the county will be better served by such an arrangement, make contractual agreements with one (1) or more existing boards of health for services for any part of the county adjacent to the jurisdictional area of such board of health. For these services, the board of county commissioners for the contractual area are authorized to provide funds from the general fund of such county. Whenever such contracts are made such boards of health are declared to be the board of health for the contractual area with all the powers and duties of such boards of health.

History: En. Sec. 19, Ch. 110, L. 1907; Sec. 1492, Rev. C. 1907; re-en. Sec. 2473, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1957. For earlier acts see sections 163 to 167, 5th Division Compiled Statutes, 1887.

Amendment

The 1957 amendment added all that portion of this section beginning with the fourth sentence.

Repealing Clause

Section 2 of Ch. 111, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 9—STATE EPIDEMIOLOGIST—EMPLOYMENT AND POWERS

Section 69-901. State epidemiologist—employment and powers.

69-901. (2540) **State epidemiologist—employment and powers.** The state board of health of the state of Montana is hereby authorized and empowered to employ a regularly qualified physician and surgeon licensed to practice such professions in the state of Montana, and who, in addition to such qualifications shall be a technically trained and competent public health physician; such person may be described by the board as state epidemiologist or described and referred to as disease control officer or by such other title as the board may designate.

History: En. Sec. 1, Ch. 76, L. 1919; re-en. Sec. 2540, R. C. M. 1921; amd. Sec. 11, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

69-903. (2542) **Repealed.**

Repeal

This section (Sec. 3, Ch. 76, L. 1919), relating to the qualifications, salary, and traveling expenses of the state epidemiologist, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

CHAPTER 11—VENEREAL DISEASE CONTROL

Section 69-1101. Venereal diseases—authority of state board of health to cooperate with federal authorities in suppression.
69-1102. Acceptance and disbursement of federal moneys for control of venereal disease.

69-1101. (2562) **Venereal diseases—authority of state board of health to cooperate with federal authorities in suppression.** For the purpose of prevention, control and treatment of venereal diseases, the state board of health shall have authority to cooperate in the state of Montana with the federal public health service created by acts of Congress of the United States, including section 246 under chapter 6A, title 42, United States Code, Annotated, and acts hereafter amendatory thereof and supplemental thereto, and acts of the Congress of the United States appropriating money for such activities, as such appropriations are, from time to time, made by the Congress. The state board of health shall, itself, irrespective of appropriations, if any, made by the Congress to the state for the prevention, control and treatment of venereal diseases, undertake to prevent, control and prescribe treatments for such diseases in such ways and by such means, including education campaigns, as may be practicable, and within the limits of funds supplied for such purposes by the legislative assembly. In carrying out and discharging the duties hereby assigned to it in the field of venereal disease, the board may appoint such personnel, to serve subject to its orders and directives, as may be reasonably necessary to realize the objectives in the field, and as may be compensated within the limits of appropriations made by the legislative assembly, or by the Congress.

History: En. Sec. 1, Ch. 86, L. 1919; re-en. Sec. 2562, R. C. M. 1921; amd. Sec. 12, Ch. 264, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

69-1102. (2563) **Acceptance and disbursement of federal moneys for control of venereal disease.** The state treasurer is hereby authorized to accept, under the conditions of said acts of Congress, and other acts applicable to the subject matter, and to disburse, under the direction and control of the state board of health in compliance with such acts, all moneys received by or allocated to the state of Montana, under said acts of Congress, or otherwise allotted and paid to the state of Montana by the government of the United States for the prevention, control and treatment of venereal diseases.

History: En. Sec. 2, Ch. 86, L. 1919; re-en. Sec. 2563, R. C. M. 1921; amd. Sec. 13, Ch. 264, L. 1955.

Amendment

The 1955 amendment inserted the words "and other acts applicable to the subject matter"; inserted the words "and control" after the words "under the direction"; inserted the words "in compliance with such acts"; inserted the words "or allocated to"; substituted "government of the United States" for "federal government" and deleted from the end of the section, the words "and all moneys appropriated under this act."

CHAPTER 13—PUBLIC AND OTHER WATER SUPPLIES—CONTROL BY STATE BOARD OF HEALTH

Section 69-1326. Short title.
69-1327. Statement of policy.
69-1328. Definitions.
69-1329. Administration.
69-1330. Powers and duties of the council.
69-1331. Powers and duties of the board.
69-1332. Pollution unlawful—permits.
69-1333. Inspection and entry.
69-1334. Classifications and standards.
69-1335. Hearings and review.
69-1336. Penalties.
69-1337. Compliance.
69-1338. Injunction.
69-1339. State officers to cooperate with the state water pollution council.
69-1340. Repeal.
69-1341. Preservation of rights.

69-1321 to 69-1325. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 184, L. 1949), relating to the water pollution control act, were repealed by Sec. 15, Ch. 142, Laws 1955 (69-1340). A new water pollution act is compiled as secs. 69-1326 to 69-1341.

69-1326. Short title. This act shall be known as the Water Pollution Act of the state of Montana.

History: En. Sec. 1, Ch. 142, L. 1955.

Title of Act

An act to create a state water pollution council, to control, prevent and abate pollution of the surface and underground waters of the state of Montana, and repealing chapter 184 of the thirty-first legislative assembly, and repealing all acts or parts of acts in conflict herewith and for other purposes.

69-1327. Statement of policy. (a) Whereas a comprehensive program of water resource development for municipal and industrial water supply, irrigation, fish and wildlife conservation, and recreation is now in progress in this state, and, whereas pollution of the waters of this state may constitute a menace to public health and welfare, and may adversely affect livestock, wildlife, fish and aquatic life, and may progressively obstruct agricultural, industrial, recreational and other legitimate uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality and potability thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for agricultural, industrial, recreational and other legitimate beneficial uses, to provide a comprehensive program in the public interest for the prevention, abatement and control of new or existing water pollution, to provide effective means for the carrying out and enforcement of such program, and to provide for cooperation with agencies of other states and the federal government in carrying out these objectives.

(b) It is not the intention of this act that wastes shall be treated to a purer condition than the natural condition of the receiving stream, provided that any municipal or industrial pollution upstream be not considered as natural.

(c) It is hereby declared to be the intention of this act to effectuate the control of pollution as herein defined only.

History: En. Sec. 2, Ch. 142, L. 1955.

69-1328. Definitions. For the purpose of this act, the following words and phrases shall have the meanings ascribed to them in this section: (a) "Sewage" means the water-carried waste products from the residences, public buildings, institutions or other buildings, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present. The provisions of this act shall not apply to the excrementitious discharges of domestic and farm animals providing human health is not involved.

(b) "Industrial waste" means any liquid, gaseous or solid waste substances resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource, together with such sewage as may be present, which may pollute the waters of the state.

(c) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals and all other substances which may pollute the waters of the state.

(d) "Contamination" means an impairment of the qualities of the waters of the state by sewage or industrial wastes to a degree which creates a hazard to human health.

(e) "Pollution" as used in this act shall mean the alteration of the physical, chemical or biological properties of any waters of the state which renders said waters harmful or detrimental for their most beneficial uses and over which the authority of the state board of health as vested by Title

69, Chapter 13 of the Revised Codes of Montana, 1947, as herein amended, does not extend, except that no waters not now being used for human consumption as a single public supply system serving more than one hundred (100) persons shall be classified other than for industrial waste use where the same have been primarily and continuously devoted to industrial waste use except for seasonal variations for a period of over thirty (30) years.

Where waters have been classified or standards established pursuant to this act, any discharge which is not in accord with such classification or standards shall be deemed to be pollution.

(f) "Sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for collecting or conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

(g) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other words not specifically mentioned herein, installed for the purpose of treating, stabilizing or holding sewage, industrial waste, or other wastes.

(h) "Disposal system" means a system for disposing of sewage, industrial waste or other wastes, and includes sewerage systems and treatment works.

(i) "Waters of the state" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways drainage systems and other bodies of water, surface and underground, natural or artificial, publicly or privately owned. Provided, however, that unless drainage or seepage from artificial, privately owned bodies of water reaches flowing streams of the state in such condition as to pollute such flowing waters, the provisions of this act shall not apply to artificial, privately owned waters; and provided further, the provisions of this act shall not apply to any waters of the state not reasonably suitable for domestic or public water supply for human consumption at the time of the passage of this act.

(j) "Person" means the state or any instrumentality thereof, any municipality, political subdivision, institution, public or private corporation, partnership, individual, or other entity.

History: En. Sec. 3, Ch. 142, L. 1955.

69-1329. Administration. (a) The state board of health, hereinafter referred to as "the board" shall under the supervision of the council as hereinafter described, have the responsibility for the administration of this act. Subject to the general supervision of said council, the executive officer of the board shall administer the provisions of the act in accordance with said council's rules, regulations, orders, standards of water quality and classifications of the waters of the state. The executive officer of the board may delegate to any employee of the board such of his functions and duties as he deems necessary for the proper and efficient administration of this act, except as provided in (b) below.

(b) There is hereby created a state water pollution council, hereinafter referred to as the "council." The council shall consist of seven (7) members as follows:

The executive officer of the state board of health; the state fish and game warden (director, state fish and game department); the state engineer; and four (4) members to be appointed by the governor as follows: A representative of industry concerned with the disposal of inorganic waste within the state, for an initial term of one (1) year, thereafter for a term of four (4) years; a representative of industry concerned with the disposal of organic waste within the state for an initial term of two (2) years, thereafter for a term of four (4) years; a representative of agriculture within the state for an initial term of three (3) years, thereafter for a term of four (4) years; a representative of municipal government within the state for a term of four (4) years. The chairman shall be elected from among their number.

No additional compensation shall be allowed any members of the council for services rendered who are employed by the state government. The four (4) members appointed by the governor to serve on the council shall each be paid in addition to actual travel expenses, ten dollars ($10.00) per day for each day of actual services in the performance of their duties, and all members of the council shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the council. All expenses of members who are otherwise in the employ of the state government shall be paid from the appropriation to their respective agencies. The expenses and per diem of the members who are appointed by the governor shall be paid from funds available to the state board of health.

The council shall hold at least two (2) regular meetings each calendar year and shall keep a record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the council. Written notice of the time and place for all meetings shall be mailed in advance to the office of each member of the council and the secretary. A majority of the members of the council shall constitute a quorum.

Each member of the council may, by order filed with the secretary of the council, designate a deputy or alternate to perform the duties of the member making the designation. Such persons, if any, designated pursuant to this action, shall have the powers and be subject to the duties and responsibilities of the member designating him.

(c) The secretary of the council shall be a member of the public health engineering staff of the state board of health, designated by the executive officer of the board. The secretary shall keep all records of meetings of and actions taken by the council. He shall keep the council advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined upon by the council, not inconsistent with rules, regulations, and policies adopted by authority of this act or specific authority otherwise given the council.

History: En. Sec. 4, Ch. 142, L. 1955.

69-1330. Powers and duties of the council. The council is herewith authorized and directed:

(a) To study, investigate, or cause to be studied and investigated, and from time to time, determine ways and means of eliminating from the streams and waters of the state, so far as practical, all substances and materials which pollute the same, and to determine methods, so far as practical, of preventing pollution that is detrimental to the public health or the health of animals, fish, or aquatic life, or the industrial development of the state, or detrimental to the practical use of waters for recreational purposes, agricultural or industrial purposes, or obnoxious, nauseous or toxic for domestic purposes;

(b) To devise, formulate and adopt rules, regulations and methods of procedure for transmittal to the board for their guidance in the administration of this act;

(c) To develop and adopt a comprehensive program for the prevention, control and abatement of pollution of the waters of the state and from time to time review and modify such program for the guidance of the board;

(d) To recommend and encourage studies, investigations, research, demonstrations relating to water pollution and causes, prevention, control and abatement thereof as are deemed advisable and necessary and to direct the board regarding any actions deemed necessary from the results of such studies, investigations, research and demonstrations in order that the board may discharge its functions under this act;

(e) To formulate the standards of water purity and classification of water according to the most beneficial uses of such water; in formulating such standards and classifications consideration shall be given to the economics of waste treatment and prevention;

(f) To hold hearings necessary for the proper administration of this act; and to receive complaints and make investigations in relation thereto;

(g) To exercise all incidental powers necessary to carry out the purposes of this act;

(h) To utilize, in carrying out its duties, such staff services of the board as the board is able to make available within its budgetary limits.

History: En. Sec. 5, Ch. 142, L. 1955.

69-1331. Powers and duties of the board. The board shall have and may exercise the following powers and duties:

(a) To consider actions of this council as set forth in section 5 [69-1330], providing that the board may modify such actions of the council only insofar as is necessary to protect human health;

(b) To accept and administer loans and grants from the federal government and from any other source for carrying out any of its functions;

(c) To issue, modify or revoke orders for the abatement of pollution or to require the adoption of such remedial measure, including the construction of new disposal systems or treatment works or the modifications, extension or alteration of existing systems and works, as it shall be directed by the council;

(d) To examine and approve or disapprove all plants and specifications for the construction and operation of (1) new sewerage systems, disposal systems and treatment works, (2) extensions, modifications of or additions

to new or existing sewerage systems, disposal systems or treatment works, (3) extension and modifications of or additions to factories, manufacturing establishments or business enterprises, the operation of which would cause a substantial increase in waste discharges or otherwise substantially alter the physical, chemical or biological properties of the waters of the state and (4) new outlets for the discharge of sewage, industrial wastes or other wastes into any sewerage system or otherwise into the water of the state subject to the rules and regulations of the council;

(e) To issue, continue in effect, revoke, modify or deny permits to any person for the collection and discharge of sewage and industrial and other wastes under such conditions as the council may prescribe to achieve the purposes of this act;

(f) To advise, consult and cooperate with other agencies of the state and other states and federal government and with affected groups, political subdivisions and industries, in the formulation of such comprehensive program;

(g) To collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

(h) To conduct as it deems necessary, studies, investigations, research and demonstrations relating to water pollution and the causes, prevention, control and abatement thereof.

History: En. Sec. 6, Ch. 142, L. 1955.

69-1332. Pollution unlawful—permits. (a) It shall be unlawful for any person to cause the pollution, as defined in section 3, subsection (e) [69-1328(e)] of this act, of any waters of the state.

(b) It shall be unlawful for any person to construct, install or operate a new sewerage system, disposal system or treatment works, extensions, modifications, or additions to new and existing sewerage systems, disposal systems, or treatment works, extensions, modifications or additions to factories, manufacturing establishments or business enterprises, the operation of which would cause a substantial increase in waste discharges to the waters of the state, or otherwise substantially alter the physical, chemical or biological properties of the waters of the state to make or cause to be made any new outlet for the discharge of sewerage, industrial waste or other wastes into any sewerage system or into the waters of this state without first securing such a permit as the board may by regulations require. The board may require the submission of plans and specifications for approval or disapproval and such other information as it deems relevant in connection with the issuance of such permits.

History: En. Sec. 7, Ch. 142, L. 1955.

69-1333. Inspection and entry. The board, through its duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to pollution of any waters of the state.

History: En. Sec. 8, Ch. 142, L. 1955.

69-1334. Classifications and standards. (a) In order to effectuate a comprehensive program for the prevention, abatement and control of pollu-

tion in the waters of the state, the council is authorized to group such waters into classes in accordance with their present and future most beneficial uses in the interest of the public and such classification or standards may from time to time be altered or modified. Standards of quality and purity for each such classification of the waters of the state shall be adopted in relation to the most beneficial use and benefit to which the waters are or may in the future be put. Such standards may from time to time be altered or modified.

Before streams are classified or standards established or before such standards are modified or repealed, public hearings by the council shall be held in connection therewith. Notice of public hearing for the consideration, adoption or amendment of the classification of waters and the standards of purity and quality thereof shall specify the water concerning which a classification is sought to be made or for which standards are sought to be adopted and the time, date and place of such hearing. Such notice is to be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation in the area affected and in addition shall be mailed to such other persons as the council has reason to believe may be affected by such classifications and the settings of such standards.

History: En. Sec. 9, Ch. 142, L. 1955.

69-1335. Hearings and review. (a) Any order issued by the council or board shall become final upon thirty (30) days after notice thereof is given to the person affected by such order unless within such thirty (30) day period such person files a notice of application for rehearing with the council. If such notice is filed the council shall accord the appellant a rehearing. A record or summary of the proceedings of such rehearing shall be filed with the council, together with findings of fact made by the council. In any such rehearing, a representative of the council is authorized to administer oaths, examine witnesses and issue notices of hearings and subpoenas requiring the testimony of witnesses and the production of evidence relevant to matter involved in the rehearing. Witnesses shall receive the same fees and mileage as in civil actions. In case of failure to obey a notice of hearing or subpoena issued under this section the district court for the county where the hearing is held shall have jurisdiction upon application of the council or its representatives to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by the district court as contempt thereof.

The council shall affirm, modify or reverse such order and notify the appellant of its action. The action of the council shall become final thirty (30) days after notice of such action is served upon the appellant by registered mail or unless within such time an appeal is taken to the district court as herein provided.

An appeal may be taken from any decision of the council by any person who is or may be adversely affected thereby to the district court of any county wherein any part of such alleged pollution originates or where any other matter or controversy may arise. Within thirty (30) days after receipt of a copy of the order of the council made on rehearing or after service of notice thereof by registered mail, the appellant or his attorney

shall serve a notice of appeal on the council through its secretary, provided that during such thirty (30) day period the court may for good cause shown extend the time for notice of appeal for not exceeding an additional sixty (60) days. The notice of appeal shall refer to the action appealed from and shall specify the ground of appeal. The original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within ten (10) days of the service of the notice and thereupon the court shall have jurisdiction of the appeal.

The appellant and the council shall in all cases be deemed the original parties to an appeal. Any person affected may become a party by intervention as in a civil action upon showing cause therefor. The attorney general shall represent the council if requested by the council on all such appeals on behalf of the state, or the council is empowered at its discretion to appoint special counsel for such proceeding. No bond or deposit for cost shall be required of the state or council upon any such appeal or upon any subsequent appeal to the supreme court or other court proceedings, pertaining to the matter.

The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the council regularly pursued its authority, or whether or not the orders of the board and the findings of the council ought to be sustained, or whether or not such orders and findings are reasonable under all of the circumstances of the case.

An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner as is provided in civil cases. Upon the final determination of such judicial proceedings, the council shall enter an order in accordance with such determination.

History: En. Sec. 10, Ch. 142, L. 1955.

69-1336. Penalties. Any person who violates any final determination or order of the board or of the council shall be enjoined from continuing such violation.

History: En. Sec. 11, Ch. 142, L. 1955.

69-1337. Compliance. Within thirty (30) days after the date on which order of the board or of the council becomes final or after the date judgment affirming such an order is entered, the person or persons as defined herein upon whom the order has been served shall initiate such steps as may be necessary to comply with it. Provided, however, upon good cause shown the board or the council shall extend said thirty (30) day period for a reasonable period of time.

History: En. Sec. 12, Ch. 142, L. 1955.

69-1338. Injunction. It shall be the duty of the council to bring action for an injunction against any person or persons violating any final order of the board or of the council.

History: En. Sec. 13, Ch. 142, L. 1955.

69-1339. State officers to cooperate with the state water pollution council. The council is hereby authorized to require the assistance, cooperation and services of and the use of the records and files in all the departments and institutions of the state, and all state officers and the

governing authorities of all state institutions are hereby directed to cooperate with the council in furthering the purposes of this act.

History: En. Sec. 14, Ch. 142, L. 1955.

69-1340. Repeal. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. The provisions of this act are, however, not to be construed to impair or lessen in any manner the existing powers and duties of the state board of health, except that chapter 184 of the thirty-first legislative assembly is hereby repealed.

History: En. Sec. 15, Ch. 142, L. 1955.

69-1341. Preservation of rights. It is the purpose of this act to provide additional and cumulative remedies to prevent, abate and control the pollution of the waters of the state. Nothing herein contained shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this act or any act done by virtue thereof, be construed as estopping the state, or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: En. Sec. 16, Ch. 142, L. 1955.

Separability Clause

Section 17 of Ch. 142, Laws 1955 read "Severability. If any section, subsection, sentence, clause, phrase or words of this act is for any reason held to be unconstitutional, such decrees shall not affect the validity of any remaining portions of this act."

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE AND SALE

69-1913. (2798) **Repealed.**

Repeal

This section (Sec. 13, Ch. 129, L. 1917), relating to vehicles transporting explosives, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955. See sec. 32-21-153 for new regulations.

69-1915. (2800) **Repealed.**

Repeal

This section (Sec. 15, Ch. 129, L. 1917), providing a penalty for violations of the act, was repealed by Sec. 158, Ch. 263, Laws 1955, effective July 1, 1955.

69-1925. (2810) **Magazines, etc., to bear warning signs.**

Cross-Reference

Regulating transportation of explosives by highway vehicles, sec. 32-21-153.

CHAPTER 27—FIREWORKS REGULATION

Section 69-2701. Fireworks defined for the purposes of this act.

69-2701. Fireworks defined for the purposes of this act. The term "fireworks" shall mean and include any combustible, or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation as known and defined under the interstate commerce commission regulations for the transportation of explosives and other dangerous articles as class B fireworks, requiring a

red label for shipment of the same in interstate commerce and specifically including sky rockets.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957.

Amendment

The 1957 amendment substituted the words "as known and defined under the interstate commerce commission regulations for the transportation of explosives and other dangerous articles as class B fireworks, requiring a red label for shipment of the same in interstate commerce and specifically including sky rockets" for the words "and shall include blank cartridges, toy cannons, in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers exceeding two (2) inches in length, and one-quarter (¼) inch in diameter, torpedoes, skyrockets, Roman candles, Daggo bombs, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance" and deleted the Exceptions paragraph, for text of which see parent volume.

Repealing Clause

Section 2 of Ch. 136, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 28—REFRIGERATED LOCKERS—REGULATION OF

Section 69-2802. Definitions.
69-2803. License required.
69-2804. Fee—term of license.
69-2805. Cancellation or suspension of license—procedure.
69-2807. Rules and regulations—cooperative agreements.
69-2808. Inspections.
69-2810. Authority of board to issue subpoenas.
69-2813. Lien of operator for charges—requirements on receipt of game, veal and beef.

69-2802. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(a) "Refrigerated locker" or "locker" means any place, premises or establishment where facilities for the cold storage and preservation of human food in separate and individual compartments are offered to the public upon a rental or other basis providing compensation to the person offering such services.

(b) "Person" includes any individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaging in the business of operating or owning or offering the services of refrigerated lockers as above defined.

(c) The term "board" means the state board of health of the state of Montana.

History: En. Sec. 2, Ch. 220, L. 1947; amd. Sec. 14, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted present subdivision (c) for one which read: "The term 'director' means the director of the food and drugs division of the state board of health of Montana."

69-2803. License required. No person hereafter shall engage within this state in the business of owning, operating or offering the services of any refrigerated locker or lockers without having obtained from the board a license for each such place of business. Application for such license shall be made in writing and under oath to the board, on such forms and with such pertinent information as it may deem necessary. Such licenses shall be granted as a matter of right, unless conditions exist which are grounds

for a cancellation or revocation of a license as hereinafter set forth, and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth.

History: En. Sec. 3, Ch. 220, L. 1947; amd. Sec. 15, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted "board" for "director" each time it appears and added the words "and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth" at the end of the section.

69-2804. Fee—term of license. (a) There shall be paid to the board with each application for a refrigerated locker license or for renewal of such license an annual license fee of ten dollars ($10.00).

(b) Each such license shall expire on December 31st following its date of issue, unless sooner revoked for cause. Renewal may be obtained annually by paying the required annual license fee. Such license fee shall not be transferable to any person nor be applicable to any location other than that for which originally issued. Application made after July 1st of each year shall be entitled to such license for the remainder of the year on payment of a fee of five dollars ($5.00).

History: En. Sec. 4, Ch. 220, L. 1947; amd. Sec. 16, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted the word "board" for "director" in subdivision (a).

69-2805. Cancellation or suspension of license—procedure. (a) The board may cancel or suspend any such license if it finds after proper investigation that (1) the licensee has violated any provisions of this act or of any other law of this state relating to the operation of refrigerated lockers or of the sale of any human food in connection therewith, or any regulation effective under any act the administration of which is in the charge of the state board of health of Montana, or (2) the licensed refrigerated locker premises or any equipment used therein or in connection therewith is in an unsanitary condition and the licensee has failed or refused to remedy the same within ten (10) days after receipt from the board of written notice to do so.

(b) No license shall be denied, revoked or suspended by the board without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at public hearing such charge within ten (10) days from the date of such notice.

(c) Any order made by the board suspending or revoking any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date notice in writing of the board's order revoking or suspending such license has been served upon him.

(d) It shall be the duty of each county attorney to whom any violation of this act is reported to cause appropriate proceedings to be instituted and prosecuted in the district court in the county without delay, provided, however, that nothing in this act shall be construed as requiring the board to report for prosecution minor violations of the act whenever it believes

that the public interest will best be served by a suitable notice of warning in writing.

History: En. Sec. 5, Ch. 220, L. 1947; amd. Sec. 17, Ch. 264, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

69-2807. Rules and regulations—cooperative agreements. (a) The board is hereby empowered to prescribe and to enforce such rules and regulations and to make such definitions, and to prescribe such procedure with regard to hearings, as it may deem necessary to carry into effect the full intent and meaning of this act.

(b) The board is hereby authorized to enter into cooperative agreements with any of the state agencies or political subdivisions and it may delegate authority to these state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 7, Ch. 220, L. 1947; amd. Sec. 18, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted "board" for "director" and "it" for "he" each time they appear in this section.

69-2808. Inspections. The board, through such of its members, officers or agents as it may authorize, shall cause to be made periodically a thorough inspection of each establishment licensed under this act to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this act and of all other laws of this state applicable to the operation either of refrigerated lockers or of the handling of human food in connection therewith, and of all regulations effective under this act relative to such operation. Such inspection shall also be made of each vehicle used by operator of refrigerated lockers or of an establishment handling human food in connection therewith, when such vehicle is used in transporting or distributing human food products to or from refrigerated lockers within this state.

History: En. Sec. 8, Ch. 220, L. 1947; amd. Sec. 19, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted the words "board, through such of its members, officers or agents as it may authorize" for "director."

69-2810. Authority of board to issue subpoenas. In any proceeding under this act the board may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Montana.

History: En. Sec. 10, Ch. 220, L. 1947; amd. Sec. 20, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted "board" for "director."

69-2813. Lien of operator for charges—requirements on receipt of game, veal and beef. Every operator of a locker shall have a lien upon all the property of every kind in his posesssion for all lockers' rentals, processing, handling or other charges due. Such lien may be foreclosed under the procedure as provided for chattel mortgages.

Locker owners and operators shall not be responsible for liability for violations of game or other laws by renters unless the contents of the

locker are under the control of the locker plant operator. Except that operator shall not receive for processing quick freeze, or cold storage any quarter, half, or whole carcass of any beef or veal or game or game birds except that such carcass or portion herein mentioned, shall be properly stamped or tagged. In the event that carcass or portion herein mentioned shall not be properly stamped or tagged, said operator shall require a declaration to be made and signed showing required authority to said carcass or portion thereof described with the detail of obtaining possession, date of placing in the locker, the weight and the type of meat, said declaration must be kept as a matter of record for one (1) year open to inspection by a duly authorized agent of the board.

History: En. Sec. 13, Ch. 220, L. 1947; amd. Sec. 21, Ch. 264, L. 1955.

Amendment

The 1955 amendment substituted "board" for "director."

CHAPTER 30—MONTANA HOSPITAL SURVEY AND CONSTRUCTION ACT

Section 69-3002. Definitions.
69-3003. Administration—hospital survey and construction.
69-3004. General powers and duties.
69-3006. Survey and planning activities.
69-3007. Construction program.
69-3009. State plan.
69-3010. Minimum standards for hospital and medical facilities maintenance and operation.
69-3012. Construction projects—applications.
69-3015. Hospital and medical facilities construction fund.
69-3016. Consolidated applications by two or more counties.
69-3018. State and federal participation in hospital and medical facilities construction.

69-3002. Definitions. As used in this act:

(a) "Board" means the state board of health of the state of Montana.

(b) "The Federal Act" means Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.) as now and hereafter amended.

(c) "The Surgeon General" means surgeon general of the public health service of the United States.

(d) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

(e) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(f) "Nonprofit Hospital" and "Nonprofit Medical Facility" means any hospital or medical facility owned or operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(g) "Director" means the principal administrative officer of the division of hospital survey and construction of the said state board of health of Montana as appointed by said board.

(h) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act, and such other medical facilities for which federal aid may be authorized under the federal act.

History: En. Sec. 2, Ch. 270, L. 1947; amd. Sec. 1, Ch. 215, L. 1955.

Amendment

The 1955 amendment in subd. (b) substituted "Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.) as now and hereafter amended" for "Public Law 725 of the 79th Congress, approved August 13, 1946, entitled the hospital survey and construction act" reworded subd. (f) to include the definition of "nonprofit medical facility" and added subd. (h).

69-3003. Administration—hospital survey and construction. The state board of health of the state of Montana shall possess, exercise and carry out, in the field of hospital survey and construction, the powers, functions and duties assigned to it by law and for all such purposes the board shall constitute the sole agency of the state of Montana. Specifically, the board is hereby charged with the duties of

(1) making an inventory of existing hospitals, and medical facilities and, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facilities construction as provided in sections 69-3006 to 69-3008, and

(2) developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in sections 69-3009 to 69-3016.

History: En. Sec. 3, Ch. 270, L. 1947; amd. Sec. 2, Ch. 215, L. 1955; amd. Sec. 22, Ch. 264, L. 1955.

Compiler's Note

This section was amended twice in the 1955 Session. Once by chapter 215, effective March 5, 1955 and once by chapter 264, effective March 10, 1955. Neither of the chapters made mention of the other amendment in the Session, but since the acts do not appear to be in irreconcilable conflict the compiler has made a composite section out of the two amendments, carrying the changes made by each amendment.

Amendments

The 1955 amendment by Ch. 215 inserted the words "and medical facilities" each time they appear in this section.

The 1955 amendment by Ch. 264 substituted the present first paragraph for one which read: "There is hereby established in the state board of health, a division of hospital survey and construction which shall be administered by a full-time director appointed by the board and serving under the supervision and direction of the board. The state board of health through such division, shall constitute the sole agency of the state for the purpose of."

69-3004. General powers and duties. In carrying out the purposes of the act, the board is authorized and directed:

(a) To require such reports, make such inspections and investigations and prescribe such regulations as it deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(c) To procure in its discretion the temporary or intermittent services of experts or consultants, or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) To the extent that it considers desirable to effectuate the purposes of this act, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private;

(e) To accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this act, and to expend the same for such purpose;

(f) To make an annual report to the governor on activities and expenditures pursuant to this act, including recommendations for such additional legislation as the board considers appropriate to furnish adequate hospital and medical facilities to the people of this state.

History: En. Sec. 4, Ch. 270, L. 1947; amd. Sec. 3, Ch. 215, L. 1955; amd. Sec. 23, Ch. 264, L. 1955.

Compiler's Note

This section was amended twice in the 1955 Session. Once by chapter 215, effective March 5, 1955 and once by chapter 264, effective March 10, 1955. Neither chapter made mention of the other amendment in the Session, but since the acts do not appear to be in irreconcilable conflict, the compiler has made a composite section out of the two amendments, carrying the changes made by each amendment.

Amendments

The 1955 amendment by Ch. 215 substituted the words "and medical facilities" for the words "clinic and similar facilities" in subd. (f).

The 1955 amendment by Ch. 264 in subd. (b) deleted the words "of the division" after the words "other personnel."

69-3006. Survey and planning activities. The board is authorized and directed to make an inventory of existing hospitals and medical facilities, including public, nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facilities to all the people of the state.

History: En. Sec. 7, Ch. 270, L. 1947; amd. Sec. 4, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "and medical facilities" each time they appear in this section. In the last instance they are substituted for the words "clinic and similar services."

69-3007. Construction program. The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital facilities and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facilities services reasonably accessible to all persons in the state.

History: En. Sec. 8, Ch. 270, L. 1947; amd. Sec. 5, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "and medical facilities" each time they appear in this section.

69-3009. State plan. The board shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facilities construction program developed under sections 69-3006 to 69-3008 and which shall provide for the establishment, administration, and

operation of hospital and medical facilities construction activities in accordance with the requirements of the federal act and regulations thereunder. The board shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the board shall publish a general description of the provisions thereof in three (3) successive publications at intervals of one (1) week between publications in at least one newspaper having general circulation in each county in the state, and in five (5) papers having a general circulation throughout the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The board shall from time to time review the hospital and medical facilities construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable.

History: En. Sec. 10, Ch. 270, L. 1947; amd. Sec. 6, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "and medical facilities" each time they appear in this section.

69-3010. Minimum standards for hospital and medical facilities maintenance and operation. The board shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan.

History: En. Sec. 11, Ch. 270, L. 1947; amd. Sec. 7, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "and medical facilities."

69-3012. Construction projects—applications. Applications for hospital and medical facilities construction projects for which federal funds are requested shall be submitted to the board and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or a medical facility. Each application for a construction project shall conform to federal and state requirements.

History: En. Sec. 13, Ch. 270, L. 1947; amd. Sec. 8, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "and medical facilities" and "or a medical facility."

69-3015. Hospital and medical facilities construction fund. The board is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants. There is hereby established, separate and apart from all public moneys and funds of this state, a hospital and medical facilities construction fund. Money received from the federal government for a construction project approved by the surgeon general shall be deposited to the credit of this fund and shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Claims for all payments from the hospital and medical facilities construction fund shall, if approved by the board, bear the signa-

ture of the executive officer (secretary) of the board, or in his absence, the director.

History: En. Sec. 16, Ch. 270, L. 1947; amd. Sec. 9, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "and medical facilities" each time they appear in this section and began a new sentence with the word "Claims."

69-3016. Consolidated applications by two or more counties. Any two (2) or more counties of this state may, by concurrent action of their respective boards of county commissioners, join in a consolidated application for funds for construction (and operation and maintenance when permitted) under the terms of this act of a single hosiptal, medical facility or health center for all of the counties so joining, such hospital, medical facility or health center to be located at such point within the exterior boundaries of the joining counties as may best serve the people of all the counties involved, and any laws of this state investing any county with power to construct, maintain and operate hospitals or medical facilities directly, or by lease or contract, may be utilized for joint action by any two or more counties, provided, however, that in all cases, the provisions of all laws governing submission of questions of establishment of such a hospital or medical facility, hospital or medical facilities construction, issuance of bonds therefor, and method of operation, and requiring majority vote of the taxpayers at elections on such questions in a county shall apply to and govern consolidated applications and concurrent and joint actions of two or more counties and a majority of the qualified voters in an election common to each county, in each one of the joining counties, shall be required to authorize the issuance of bonds, construction and contracts under such joint or consolidated plan.

History: En. Sec. 17, Ch. 270, L. 1947; amd. Sec. 10, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "medical facility," "or medical facilities" and "or medical facility" wherever appearing in this section.

69-3018. State and federal participation in hospital and medical facilities construction. The state of Montana is hereby authorized and empowered to participate jointly with the federal government on a dollar for dollar basis in carrying out a program of hospital and medical facilities construction in accordance with the provisions of sections 69-3001 to 69-3017 and the provisions of the federal hospital and medical facilities survey and construction act (Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.) as now and hereafter amended), and to allocate and expend money for that purpose in cases where the appropriations of money heretofore or hereafter made by the federal government under said federal act to the state of Montana are inadequate to meet the amounts needed for hospital and medical facilities construction as such needs may be determined from time to time under this act. Provided however, that any funds remaining unused for a consecutive period of two (2) years shall revert to the general fund.

History: En. Sec. 1, Ch. 105, L. 1949; amd. Sec. 11, Ch. 215, L. 1955.

Amendment

The 1955 amendment inserted the words "and medical facilities" each time they

appear in this section and substituted "Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.)" and "federal act" for "Public Law 725 of the Seventy-Ninth Congress, approved August 13, 1946" and "Public Law 725" respectively.

Separability Clause

Section 12 of Ch. 215, Laws 1955 read "Severability. If any provisions of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable."

Effective Date

Section 13 of Ch. 215, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

CHAPTER 32—STATE BOARD OF HEALTH—MATERNAL AND CHILD HEALTH SERVICES—EDUCATIVE PROGRAM—SCHOOL NURSES—SUPERVISION BY BOARD—AUTHORITY OF COUNTIES AND SCHOOL BOARDS—SERVICES FOR CRIPPLED CHILDREN—EDUCATION FOR CHILDREN AND ADULTS IN USE AND ABUSE OF NARCOTICS

Section 69-3201. Maternal and child health protection—health education program.
69-3202. School nurses—county nurses—supervision—rules and regulations.
69-3203. Services for crippled children.
69-3204. Narcotic education.
69-3205. Appointment of personnel to execute function and activities, under Chapter 32, Title 69, Revised Codes, 1947.

69-3201. Maternal and child health protection—health education program. The state board of health is hereby authorized and directed to continue to develop and administer a program for the better protection of the health of mothers and children in the state, pursuant to the purposes of the program inaugurated by the state of Montana by chapter 121, Laws of 1917. The board shall make and enforce sanitary and hygienic regulations designed to promote the health and well-being of mothers and children; it shall carry on continuously a campaign of health education in their interest; and it shall take all reasonable and proper measures for the effective protection of the health of mothers and children; however, nothing in this act shall be construed or operate so as to interfere in any way with the exercise of the child's or parent's religious belief, as to the examination for or in the treatment of diseases; provided, that quarantine regulations relating to contagious or infectious diseases are not infringed upon.

History: En. 69-3201 by Sec. 24, Ch. 264, L. 1955.

Compiler's Notes

Section 24 of Ch. 264, Laws 1955 contained a preliminary clause which read "Section 24. That there is hereby added an additional Chapter to and under Title 69, "Public Health and Safety," Revised Codes of Montana, 1947, to be numbered Chapter 32, under said Title 69, said Chapter 32 to be entitled, "State Board of Health—Maternal and Child Health Services—Educative Program—School Nurses—Supervision by Board—Authority of Counties and School Boards—Services for Crippled Children—Education for Children and Adults in Use and Abuse of Narcotics" and to contain five (5) sections numbered, successively, as sections 69-3201, 69-3202, 69-3203, 69-3204, and 69-3205, Revised Codes of Montana, 1947, as follows:"

Chapter 121, Laws of 1917, referred to in this section, was repealed by Sec. 28, Ch. 264, Laws 1955.

Title of Act

An act to simplify the organization of the state board of health of the state of Montana, and to coordinate the functions, powers and duties of the board; to make

the board, as a board, the central and responsible agency in the field of public health in the state of Montana, with respect to the multiple functions assigned to it, the powers delegated to it, and the duties prescribed for it, by the legislative assembly; to lodge and concentrate in the state board of health, as a board, functions, powers and duties that have been heretofore assigned, or conceived to be assigned, to officers, appointees, or employees of the board, whether referred to as "director" of a "division" or otherwise referred to, titled or designated in existing legislation; to provide that all persons employed by the board, or authorized by, for or on behalf of the board to exercise any power or function, or to discharge any duty, shall at all times act in subordination to the board and in compliance with its rules and regulations and its orders and directives; and to authorize the board to assign duties and to organize and coordinate its internal administration without regard to titles of appointees, or the names or titles of functional divisions or units of administration; withholding from the board, however, authority to create, establish or set up additional or new functions not delegated to it by the legislative assembly; to provide for the organization and administration of the state board of health laboratory, and its services; and, in order to accomplish such purposes and such revisions, to amend the following sections of the Revised Codes of Montana, 1947: section 69-105 (2448) relating to functions, powers and duties of the board and to its internal organization and administration, and to control by the board of its appointees and employees; section 69-201 relating to functions, powers and duties of the board in the field of industrial hygiene; section 69-301 relating to functions, powers and duties of the board in the field of tuberculosis control; sections 69-401, 69-403, and 69-404, relating to functions, powers and duties of the board in the field of dental health; sections 69-502, 69-506, and 69-519, relating to functions, powers and duties of the board in the field of vital statistics, and to the accounting for fees received; section 69-901 (2540) relating to functions, powers and duties of the board in the field of epidemic, communicable and other diseases and to the person appointed by the board and described as state epidemiologist or otherwise, under the board; section 69-1101 (2562) relating to the functions, powers and duties of the board in the field of venereal disease; section 69-1102, relating to the acceptance and disbursement of federal moneys for the suppression of venereal disease; sections 69-2802, 69-2803, 69-2804, 69-2805, 69-2807, 69-2808, 69-2810, 69-2813, relating to the functions, powers and duties of the board in connection with cold storage of food for human use, refrigerated lockers, issuance and cancellation of licenses; license fees; prosecutions for violations, and rules and regulations in the exercise of such functions, powers and duties in such field; section 69-3003, relating to the functions, powers and duties of the board in the field of hospital survey and construction; sections 71-706, 71-707, and 71-710, relating to definitions, organization and administration of activities of the state department of public welfare pertaining to child welfare services; and to enact under Title 69, Revised Codes of Montana, 1947, entitled "Public Health and Safety," a chapter to be numbered Chapter 32, to be entitled, "State Board of Health—Maternal and Child Health—Services for Crippled Children; Education for Children and Adults with Respect to Use and Abuse of Narcotics"; and to state and define in sections numbered 69-3201 through 69-3205, inclusive under said chapter 32, the functions, powers and duties of the board in the fields of (a) maternal and child health, and (b) services for crippled children, in lieu of the sections on each of said subjects repealed or amended hereby, and to provide against duplication of services by said board and the state department of public welfare, and for cooperation with the state superintendent of public instruction, and (c) in the field of narcotic education, in lieu of sections 54-206, 54-207, 54-208, and 54-209, repealed hereby; and to repeal sections 10-401 (2503), 10-402 (2504), 10-403 (2505), 10-404 (2506), 10-405 (2507), 10-406 (2508), 10-407 (2509), and 10-408 (2510) Revised Codes of Montana, 1947, and to repeal sections 69-106 (2449), 69-108 (2451), 69-302, and 69-903 (2542), Revised Codes of Montana, 1947, and to repeal sections 71-701, 71-702, 71-703, 71-704, and 71-705, Revised Codes of Montana, 1947; providing for the effective date.

69-3202. School nurses—county nurses—supervision—rules and regulations. (a) School boards may employ, in their discretion, regularly qualified nurses, duly registered in the state of Montana, to act as school nurses. In sparsely settled communities two (2) or more school boards may unite and employ a school nurse, the salary of such nurse being paid pro rata according to the assessed valuation in the school districts.

(b) County commissioners are hereby authorized at such time as they deem necessary, to employ regularly qualified nurses, to be known as county nurses, for duties pertaining to maternal and child health.

(c) The state board of health is hereby constituted the agency of the state of Montana to supervise and regulate school, county and public health nurses in the performance of their duties under all such employments; and the board shall make, publish, and from time to time, revise and amend, as necessary, and, at all times, enforce suitable rules and regulations governing the qualifications and professional activities, duties, services and administrations of school, county and public health nurses, as such, and all such regulations when properly adopted, properly identified and reasonably adequate to protect public health, shall have the force of law. In formulating such rules and regulations, and in its supervisory functions, the board shall consult with the state superintendent of public instruction, with respect to health measures in the schools and the board shall cooperate generally with school boards, and with city, county and local boards of health, in all such matters, and it shall instruct and encourage all such nurses on all matters of school or public health.

(d) The board shall cause to be prepared and distributed to the school, county and public health nurses all necessary report forms and blanks, and it shall be the duty of all such nurses to execute such forms and blanks promptly, informatively and accurately, in compliance with the board's requirements.

History: En. 69-3202 by Sec. 24, Ch. 264, L. 1955.

69-3203. **Services for crippled children.** The state board of health is hereby authorized and directed to develop and administer a program for services to crippled children, which shall have for its purpose, as far as practicable under the conditions existing in the state of Montana, to supply, extend and improve the services designated by this act for crippled children in the state of Montana. These services shall consist of locating such children and providing diagnosis, medical, surgical and corrective treatment, after-care and related services for children who are crippled, or who are suffering from conditions which lead to crippling; and the board may, in its discretion, within the limits of its funds, provide services for children who are afflicted with or suffering from rheumatic fever, or heart diseases, and who are totally incapacitated for education or for remunerative occupation. Special attention shall be given to this program in rural areas and in areas suffering from severe economic distress. The board shall do all things that are necessary to carry out this program, insofar as means are available and conditions in this state justify, and shall proceed in conformity with the social security act of the United States, rules and regulations promulgated by the U. S. children's bureau, and the statutes of the state of Montana.

History: En. 69-3203 by Sec. 24, Ch. 264, L. 1955.

69-3204. **Narcotic education.** (a) The state board of health is hereby authorized and directed to establish and administer as part of its public health education activities, a program of narcotic education, whereby it

shall carry to the general public and to and in all educational institutions in Montana, from the elementary school through the institutions of higher learning, the scientific facts concerning narcotic drugs, their use and abuse.

(b) The state board of health is authorized and hereby empowered to appoint and employ a health educational consultant with special training in narcotic education to carry out the provisions of this act, who shall be under the merit system and whose educational qualifications shall meet merit system requirements of other health education consultants.

History: En. 69-3204 by Sec. 24, Ch. 264, L. 1955.

69-3205. Appointment of personnel to execute function and activities, under Chapter 32, Title 69, Revised Codes, 1947. The state board of health shall appoint and employ such personnel as are necessary to carry out and execute effectively the functions, activities, and the duties and responsibilities with which the board is charged under this Chapter 32, Title 69, added hereby to said title of the Revised Codes of Montana, 1947, in (a) the field of maternal and child health, including the supervision of nurses employed by the state, cities, counties, and by school boards, (b) in the field of services for crippled children, and (c) in the field of narcotic education, including such technically qualified or technically trained, and competent personnel as may be required for each of such fields, within the limits of appropriations by the legislative assembly, or within the limits of grants and allowances from the United States, or of contributions, donations, and gifts from philanthropic foundations, corporate or otherwise, or from any other donors for any of such purposes. The acceptance of such contributions, donations and gifts, and the use of the funds derived therefrom by the state board of health is hereby authorized. The state board of health and the state department of public welfare shall carefully coordinate their respective services to avoid any conflict or duplication.

History: En. 69-3205 by Sec. 24, Ch. 264, L. 1955.

CHAPTER 33—GEOPHYSICAL EXPLORATION

Section 69-3301. Persons required to comply with act.
69-3302. Deemed doing business within state—resident agent.
69-3303. Filing of notice of intention to engage in geophysical exploration.
69-3304. Surety bond required—amount—filing—certificate of filing.
69-3305. Issuance of geophysical exploration permit—requirements—contents—period valid for—costs—carrying of permit.
69-3306. Duty to file record showing where work performed—time for—request to file location of shotpoint and date fired—complaint of property owners.
69-3307. Duty of county attorneys to enforce act.
69-3308. Failure to comply with act—misdemeanor.

69-3301. Persons required to comply with act. A person, firm or corporation operating individually or through agents within the state of Montana for the purpose of geophysical exploration, in which exploration the seismograph is utilized along with explosives for the determination of geophysical data for any purpose whatsoever, and which person, firm or corporation either through its own employees or by hiring the services of

others operates "seismograph crews," as the term is generally known, shall comply with the following provisions of this act; provided, however, that compliance with the provisions of this act by a seismograph crew or its employer shall constitute compliance herewith by that person, firm or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

History: En. Sec. 1, Ch. 235, L. 1955.

Title of Act

An act defining geophysical exploration; persons, firms or corporations engaged in geophysical exploration deemed engaged in doing business in Montana; necessity for filing notice of intention to engage in geophysical exploration with county clerk and recorder; necessity for filing bond with secretary of state; issuance of geophysical exploration permit by county clerk and recorder and contents of said permit; cost of said permit and disposition of revenues therefrom; necessity of having said permit in possession during periods of exploration; furnishing of information on geophysical exploration performed; duty of county attorneys to prosecute violations hereof; violation deemed misdemeanor, and repealing all acts and parts of acts in conflict herewith.

69-3302. Deemed doing business within state—resident agent. A person, firm or corporation shall be deemed to be doing business within the state of Montana when engaged in such geophysical exploration, within the boundaries of this state, and shall, if not already qualified to do business within this state with a designation of an agent within the state for service of process, prior to such time, file with the secretary of state of the state of Montana an authorization, which authorization shall designate a resident agent for the service of process in any action which may be pending in a court in this state, which cause of action may have arisen out of such geophysical exploration.

History: En. Sec. 2, Ch. 235, L. 1955.

69-3303. Filing of notice of intention to engage in geophysical exploration. It shall be necessary for any person, firm or corporation desiring to engage in such geophysical exploration within the state of Montana, prior to actually so engaging in such exploration, to file a notice of intention to engage in such geophysical exploration with the county clerk and recorder in each county in which exploration is to be carried on, or engaged in. The said notice of intention to engage in such geophysical exploration shall be filed prior to the actual commencement of such geophysical exploration.

History: En. Sec. 3, Ch. 235, L. 1955.

69-3304. Surety bond required—amount—filing—certificate of filing. A person, firm or corporation desiring to engage in such geophysical exploration, shall also file with the secretary of state a good and sufficient surety bond in the amount of ten thousand dollars ($10,000.00) for a single such geophysical crew or a blanket surety bond in the amount of twenty-five thousand dollars ($25,000.00) for all such geophysical crews operating within the state for such person, firm or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such geophysical exploration, and the said bond shall remain on file with the secretary of

state so long as the exploration is carried on or engaged in, plus an additional two (2) years thereafter; provided, however, that the aggregate liability of the surety shall, in no event, exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm or corporation.

History: En. Sec. 4, Ch. 235, L. 1955.

69-3305. Issuance of geophysical exploration permit—requirements—contents—period valid for—costs—carrying of permit. The county clerk and recorder of each county in the state of Montana, upon compliance with the provisions herein contained, namely the filing of a notice of intention to engage in such geophysical exploration, in addition to a certificate or photostatic copy thereof from the secretary of the state of Montana certifying the name and address of the resident agent for service of process for said person, firm or corporation desiring to engage in such geophysical exploration, and certifying that the required surety bond has been filed with the said secretary of state, shall issue to such person, firm or corporation a "geophysical exploration permit," which permit will show the names of the person, firm or corporation; his or its principal place of business; if a firm or corporation, the names and addresses of its officers; the name and address of the resident agent for service of process for said person, firm or corporation; that a notice of intention to engage in such geophysical exploration has been duly filed; that a good and sufficient surety bond has been filed by the said person, firm or corporation, naming the surety company and giving its address; such permit to be signed by the county clerk and recorder and/or his deputy, and bearing the official county seal. Such permit shall be valid and effective for all such geophysical crews of the permittee during the calendar year in which it is issued. The cost of the said permit shall be five dollars ($5.00) per calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county so issuing. Such funds as are realized shall be applied toward payment of the cost of printing said permits, which shall be printed at the county seat, and such excesses shall, from year to year, go into the county's general fund; provided, however, that if printed forms are not available at the time any person, firm or corporation desires such permit and qualifies for its issuance, typewritten or other form of reproduction of such permit may be used and the fee of five dollars ($5.00) shall nevertheless be paid for its issuance and such fee shall be disposed of in the same manner. The said permit or photostatic copy thereof shall be carried by the person, or the agent of the firm or corporation, at all times during the period of such geophysical exploration and shall be exhibited upon demand by any county or state official.

History: En. Sec. 5, Ch. 235, L. 1955.

69-3306. Duty to file record showing where work performed—time for—request to file location of shotpoint and date fired—complaint of property owners. Within three (3) months from the day any firing of shotpoints

in such geophysical exploration is done by any person, firm or corporation within this state, such person, firm or corporation shall file with the county clerk and recorder of the county in which such work was done a record showing each township and range within said county in which such work was performed and the approximate date at which such work was performed. Such person, firm or corporation shall file with said county clerk and recorder a record showing the location of each such shotpoint and date fired within a maximum area of any square, four-section area of land, upon written request therefor by said county clerk and recorder, which request must be based upon the complaint of a property owner that physical damages to such property have arisen by reason of the use of the seismograph and explosives in such geophysical operations at some location within said maximum four-mile square area, and such written notice shall designate the name and address of the complaining person and shall describe the approximate date of the alleged damages and the nature of the alleged damages. The required record of operations in response to such written demand therefor by the county clerk and recorder shall be supplied within ten (10) days from the date on which such written demand is received.

History: En. Sec. 6, Ch. 235, L. 1955.

69-3307. Duty of county attorneys to enforce act. It shall be the duty of the several county attorneys to see that the provisions herein contained are complied with and that this law is enforced.

History: En. Sec. 7, Ch. 235, L. 1955.

69-3308. Failure to comply with act—misdemeanor. A failure to comply with the terms of this act shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both.

History: En. Sec. 8, Ch. 235, L. 1955.

Repealing Clause

Section 9 of Ch. 235, Laws 1955 repealed all acts and parts of acts in conflict therewith.

TITLE 70—PUBLIC UTILITIES

CHAPTER 1—PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

70-103. (3881) "Public utility" defined.

References

Cited or applied in State ex rel. Olsen v. Public Service Commission, — M —, 283 P 2d 602, 604.

70-105. (3883) Public utilities to furnish service for reasonable charges.

Collateral References

Right to cut off water supply because of failure to pay sewer service charge. 26 ALR 2d 1359.

70-128. (3906) Action to set aside rates or charges fixed by commission.

Demurrer

That part of this section which requires the commission and other parties defendant to file their answer to the complaint within thirty days does not preclude the filing of a dmurrer. There is no reason why the commission may not properly demur upon grounds which raise only questions of law that are preliminary to a consideration of the case on the merits. As to the contention that this results in the delay of the trial, it is sufficient to say that it is proper for the court to extend the time for answering for a reasonable time after disposition of the demurrer. State ex rel. Olsen v. Public Service Commission, — M —, 283 P 2d 594, 596.

CHAPTER 3—TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT AND POWER LINES

70-301. (6645) Rights-of-way for pole lines along streets, roads, etc.

References

Cited or applied in Marchi v. Brackman, — M —, 299 P 2d 761, 764.

TITLE 71—PUBLIC WELFARE AND RELIEF

Chapter 1. County poor—care of, by county commissioners, 71-101, 71-118.
2. Public welfare act part 1—to establish a state department of public welfare and county departments of public welfare, 71-202, 71-210, 71-230.
3. Public welfare act part 2—general relief—to provide aid to the unemployable, destitute and those made destitute through lack of employment and all those in need of public assistance not eligible or otherwise cared for under other parts of this act, 71-308.
4. Public welfare act part 3—to provide for old age assistance to aged persons in need in conformity with title 2 of the federal social security act of 1935 or as amended, 71-401, 71-405.
5. Public welfare act part 4—to provide for aid to needy dependent children in conformity with part 4 of the federal social security act of 1935 or as amended, 71-501, 71-502, 71-508.
6. Public welfare act part 5—to provide for aid to needy blind individuals in conformity with title 10 of the federal social security act of 1935 or as amended, 71-601, 71-611.
7. Public welfare act part 6—to provide for services for crippled children and child welfare services, in conformity with title 5, parts 2 and 3 of the federal social security act of 1935, or as amended, and transferring the powers and duties of the state bureau of child protection and the orthopedic commission to the authority and supervision of the state department of public welfare, 71-706, 71-707, 71-710.
10. Public welfare act part 9—to provide for payments to persons having silicosis, 71-1003, 71-1004, 71-1008.
12. Permanently and totally disabled persons in need, 71-1201, 71-1206.
14. Services to the blind, 71-1401 to 71-1415.

CHAPTER 1—COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

Section 71-101. The board of county commissioners vested with control.
71-118. County farm.

71-101. (4521) The board of county commissioners vested with control. The board of county commissioners are vested with superintendence of the poor.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Statutes; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 1, p. 51, L. 1876; re-en. Sec. 955, 5th Div. Rev. Stat. 1879; re-en. Sec. 1609, 5th Div. Comp. Stat. 1887; re-en. Sec. 3200, Pol. C. 1895; re-en. Sec. 2050, Rev. C. 1907; re-en. Sec. 4521, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1957.

Amendment

The 1957 amendment deleted the words "entire and exclusive" which appeared between the words "with" and "superintendence."

71-103. (4523) Repealed.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to support of intemperate person, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-104. (4524) Repealed.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; amd. Sec. 1, Ch. 19, L. 1933), relating to when a person may receive relief from the county, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-105. (4524.1) Repealed.

Repeal

This section (Sec. 2, Ch. 19, L. 1933), relating to relief being worked out by able-bodied male, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-106. (4465.4) Support of poor and indigent persons—tax levy.

Temporary Additional Tax Levy (Laws 1957, Ch. 36)

An act to authorize in certain instances the boards of county commissioners to levy an additional tax of not to exceed four (4) mills for the county poor funds; providing for an effective date and a repealing clause.

Section 1. Whenever the boards of county commissioners of counties coming within the provisions of this act find that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy not to exceed four (4) mills, or so much thereof as may be necessary to meet such expenditures, as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Section 2. On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is found by the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget, together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Section 3. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents and if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificate to such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

Section 4. This act shall be in full force and effect from the first day of July, 1957, to the thirtieth day of June, 1959, and not thereafter.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

An identical law (Laws 1955, ch. 73) was in force from July 1, 1955 to June 30, 1957.

Collateral References

Reimbursement of public for financial assistance to aged persons. 29 ALR 2d 731.

71-108. (4525) Repealed.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; amd. Sec. 1, Ch. 29, L. 1909; amd. Sec. 1, Ch. 50, L. 1933; amd. Sec. 1, Ch. 131, L. 1943), relating to the care of county poor and indigent sick and infirm, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-109. (4526) Repealed.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; amd. Sec. 2, Ch. 29, L. 1909; amd. Sec. 1, Ch. 45, L. 1911; amd. Sec. 2, Ch. 50, L. 1933; amd. Sec. 2, Ch. 131, L. 1943; amd. Sec. 1, Ch. 124, L. 1949), relating to contracts for care of poor and indigent sick and infirm, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-110. (4527) Repealed.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; amd. Sec. 1, Ch. 31, L. 1917; amd. Sec. 1, Ch. 55, L.

1927; amd. Sec. 3, Ch. 131, L. 1943), relating to the contract for medicines and medical attendance, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-112. (4528) **Repealed.**

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to the board's rejection of any bid, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-115. (4531) **Repealed.**

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458 Bannack Stat.; amd. Sec. 1, Ch. 91, L. 1931; amd. Sec. 1, Ch. 19, Ex. L. 1933), relating to the application of persons seeking relief, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-118. (4534) **County farm.** The board may purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty (160) acres, to be known as the county farm, and to erect thereon suitable buildings for the use, health, and employment of all persons as are a county charge, and the county farm, and the buildings thereon, must be under such rules and regulations as the board orders. It may also provide for the care, support, and maintenance of the sick, poor, and infirm of the county upon such farm.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 14, p. 55, L. 1876; re-en. Sec. 968, 5th Div. Rev. Stat. 1879; re-en. Sec. 1622, 5th Div. Comp. Stat. 1887; re-en. Sec. 3213, Pol. C. 1895; re-en. Sec. 2063, Rev. C. 1907; re-en. Sec. 4534, R. C. M. 1921; amd. Sec. 2, Ch. 73, L. 1957.

Amendment

The 1957 amendment changed the name of the poor farm to county farm, substituted the word "buildings" for "workhouses" and deleted the words "and the persons who are a county charge" which appeared before the words "must be under such rules and regulations as the board orders."

Repealing Clause

Section 3 of Ch. 73, Laws 1957 repealed all acts and parts of acts in conflict therewith.

71-119. (4535) **Repealed.**

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.) relating to surplus moneys in the poor fund, was repealed by Sec. 1, Ch. 74, Laws 1957.

CHAPTER 2—PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section 71-202. Appointment of state board—creation—salary—bond.
71-210. Authority and activities of the state department.
71-230. Method of issuing assistance grants—reimbursement.

71-201. Creation of department.

References

Cited or applied in Anderson v. United States Civil Service Comm., 119 F Supp 567, 573.

71-202. Appointment of state board—creation—salary—bond.

(a) to (d). * * * [Subdivisions (a) to (d), same as parent volume.]

(e) Each member of the state board of public welfare shall receive fifteen dollars ($15.00) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other ex-

penses in going to, attending and returning from meetings of the board, and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed one thousand dollars ($1,000.00) in any one (1) year. No member of the state board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare or any of its agencies.

Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare.

History: En. Sec. 2, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 26, L. 1953; amd. Sec. 1, Ch. 117, L. 1957.

Amendment

The 1957 amendment substituted the first sentence of subd. (e) for the first two sentences of former subd. (e) which read "Members of the state board shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars ($10.00) per diem for each day actually in attendance at such board meetings. The per diem of such individual member of the board shall be limited to not exceed the amount of five hundred dollars ($500.00) per year."

Repealing Clause

Section 2 of Ch. 117, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 117, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

71-210. Authority and activities of the state department. The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:

(a) Administer or supervise all forms of public assistance, child protection and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) Administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(c) Give consultant service to private institutions providing care for the needy, indigent, handicapped or dependent adults;

(d) Develop and cooperate with other state agencies provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions and vocational guidance and training of the blind;

(e) Provide services to county governments in respect to organization and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions;

(f) Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Develop policies relating to educational leave of employees of the

department and prospective employees of the department; and develop policies relating to staff development needs of employees of the department. Insofar as possible such personnel shall be residents of the county;

(g) Assist and cooperate with other state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957.

Amendment

The 1957 amendment in subd. (a) added the words "including the provision of medical care payments in behalf of recipients of public assistance" and in subd. (f) added the second sentence.

Repealing Clause

Section 2 of Ch. 72, Laws 1957 repealed all acts and parts of acts in conflict therewith.

71-230. Method of issuing assistance grants — reimbursement. (a) Checks in payment of public assistance, as provided for in each part of this act, with the exception of general relief, and with the exception of old age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled payments made in behalf of such recipients for medical care shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department and all such checks will be mailed to the individual recipient. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee and the original monthly payment shall be from the state public welfare accounts. All public assistance checks shall represent cash on demand at full par value to the recipient.

(b) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county during the month. The county department must make such reimbursement to the state department within twenty (20) days after such claim is presented.

(c) Warrants or checks shall be issued from the poor fund of the county in payment of medical care provided in behalf of eligible recipients of old age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled. The warrants or checks shall be identified to the category of assistance under which issued.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957.

Amendment

The 1957 amendment in the first sentence of subd. (a) inserted the words "and with the exception of old age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled payments made in behalf of such recipients for medical care" and substituted the words "approved certificates of award and reports of changes" for "approved lists" and added subd. (c).

CHAPTER 3—PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHERWISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section 71-308. Medical aid and hospitalization.

71-308. Medical aid and hospitalization. Medical aid and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county in full upon proper claim being made to the department of public welfare; provided, further, that in all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare.

The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by such board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of such medical attendance.

The board of county commissioners shall have the responsibility of making suitable arrangements to provide respectable burial for those for whom such expenses are not otherwise available.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957.

Amendments

The 1955 amendment added the proviso clause.

The 1957 amendment added the third and fourth paragraphs.

Repealing Clauses

Section 2 of Ch. 57, Laws 1955 and Sec. 2 of Ch. 86, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—PUBLIC WELFARE ACT PART 3—TO PROVIDE FOR OLD AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-401. Provision for administration.
71-405. County share of participation.

71-401. Provision for administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of old age assistance under the powers, duties and functions as prescribed in sections 71-201 to 71-232.

(b) The county department of public welfare shall be charged with the local administration and supervision of old age assistance, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.

(c) It is hereby mandatory and required that the state plan and operation of old age assistance shall be in effect in each and every county of the state and the administration and supervision of old age assistance shall be uniform throughout the several counties of the state.

(d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to old age assistance.

(e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.

(f) Definition, old age assistance as used in this part means money payments to or payments made for medical care in behalf of aged needy individuals.

History: En. Sec. 1, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 71, L. 1957.

Amendment

The 1957 amendment in subd. (e) deleted the words "the federal social security board and" which appeared after the words "All rules and regulations of" and in subd. (f) inserted the words "or payments made for medical care in behalf of."

71-405. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved old age assistance grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Such reimbursements shall be credited to the old age assistance account of the state department. The amount of approved old age assistance grants over that to which contribution is made by the federal government shall be borne solely by the state department without reimbursement by the county department. Payments for medical care in behalf of recipients of old age assistance are not subject to the above provisions.

History: En. Sec. 5, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 69, L. 1947; amd. Sec. 1, Ch. 155, L. 1949; amd. Sec. 18, Ch. 199, L. 1951; amd. Sec. 3, Ch. 71, L. 1957.

Amendment

The 1957 amendment added the last sentence.

CHAPTER 5—PUBLIC WELFARE ACT PART 4—TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-501. "Dependent child" defined.
71-502. "Aid to dependent children" defined.
71-508. County share of participation.

71-501. "Dependent child" defined. The term "dependent child" means a child under the age of eighteen (18) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

History: En. Subd. (a) Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957.

Amendment

The 1957 amendment inserted the words "nephew, niece, or first cousin."

71-502. "Aid to dependent children" defined. The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children including money payments or payments made for medical care for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month.

History: En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957.

Amendment

The 1957 amendment inserted the words "or payments made for medical care in behalf of" and the words "or payments made for medical care."

71-508. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the amount paid by the state department after the share contributed by the federal government is deducted, of the approved aid to dependent children grants to persons in the county each month for that part of the grants to which contribution is made by the federal government. Each county department shall reimburse the state department in the amount of fifty per cent (50%) of such grants which are not included within the provisions of the first sentence of this section. These reimbursements shall be credited to the aid to dependent children account of the state department. Payments for medical care in behalf of recipients of aid to dependent children shall not be subject to the above provisions.

History: En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957.

Amendment

The 1957 amendment added the last sentence.

CHAPTER 6—PUBLIC WELFARE ACT PART 5—TO PROVIDE FOR AID TO NEEDY BLIND INDIVIDUALS IN CONFORMITY WITH TITLE 10 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-601. Definitions.
71-611. County share of participation.

71-601. Definitions. As used in this title:

(a) "Aid to blind" (or assistance) means money payments to or payments made for medical care in behalf of blind persons in need.

(b) "Supplementary services" means services other than money payments.

(c) "Ophthalmologist" means a physician licensed to practice medicine in the state of Montana and who is actively engaged in the treatment of diseases of the human eye.

(d) "Optometrist" means a practitioner licensed to practice optometry in the state of Montana and who is actively engaged in such practice.

History: En. Sec. 1, Part 5, Ch. 82, L. 1937; amd. Sec. 1, Ch. 157, L. 1951; amd. Sec. 7, Ch. 71, L. 1957.

Amendment

The 1957 amendment inserted the words "or payments made for medical care in behalf of" in subd. (a).

71-611. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of approved aid to needy blind grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Such reimbursement shall be credited to the aid to needy blind account of the state department. The amount of approved aid to needy blind grants over that to which contribution is made by the federal government shall be borne solely by the state department without reimbursement by the county department. Payments for medical care in behalf of recipients of aid to needy blind shall not be subject to the above provisions.

History: En. Sec. 10, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 69, L. 1947; amd. Sec. 2, Ch. 155, L. 1949; amd. Sec. 32, Ch. 199, L. 1951; amd. Sec. 8, Ch. 71, L. 1957.

Amendment

The 1957 amendment added the last sentence.

CHAPTER 7—PUBLIC WELFARE ACT PART 6—TO PROVIDE FOR SERVICES FOR CRIPPLED CHILDREN AND CHILD WELFARE SERVICES, IN CONFORMITY WITH TITLE 5, PARTS 2 AND 3 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935, OR AS AMENDED, AND TRANSFERRING THE POWERS AND DUTIES OF THE STATE BUREAU OF CHILD PROTECTION AND THE ORTHOPEDIC COMMISSION TO THE AUTHORITY AND SUPERVISION OF THE STATE DEPARTMENT OF PUBLIC WELFARE

Section 71-706. Definitions as used in this chapter.
71-707. Organization and administration of activities.
71-710. Child rehabilitation.

71-701 to 71-704. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 126, L. 1941), relating to the division of services for crippled children, were repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

71-705. Repealed.

Repeal

This section (Sec. 1, Part 6, Ch. 82, L. 1937), relating to the effective date for the transfer of the bureau of child protection, was repealed by Sec. 28, Ch. 264, Laws 1955, effective March 10, 1955.

71-706. Definitions as used in this chapter. (a) Child welfare services mean: The establishing, extending and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent.

(b) Child welfare worker means: Staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the state department of public welfare.

History: En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955.

Amendment

The 1955 amendment deleted former subdivision (a), for text of which see parent volume, and re-lettered the remaining subdivisions.

71-707. Organization and administration of activities. Child welfare services and child protection functions shall be organized under and administered and supervised by the state department of public welfare, subject to the general administration and regulations of the state department and the powers and duties thereof as established in sections 71-201 to 71-232, and providing for cooperation and exchange of services with the state board of health and vocational rehabilitation bureau of the state of Montana.

History: En. Sec. 3, Part 6, Ch. 82, L. 1937; amd. Sec. 26, Ch. 264, L. 1955.

Amendment

The 1955 amendment deleted the words "Services for crippled children" which appeared at the beginning of the section; substituted "state board of health" for "child welfare division of the board of health" and added the words "of the state of Montana."

71-710. Child rehabilitation. The state department shall:

(a) Enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected and delinquent children where adequate provision therefor has not been made by law; and to use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law; and cooperate for the purposes hereof with all reputable child helping and child placing agencies.

(b) Inspect, license and supervise public and private infants' homes, child caring and child placing institutions and agencies.

History: En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955.

Amendment

The 1955 amendment deleted former subdivision (a), for text of which see parent volume, and re-lettered the remaining subdivisions.

Repealing Clause

Section 28 of Ch. 264, Laws 1955 read "Sections 10-401 (2503), 10-402 (2504), 10-403 (2505), 10-404 (2506), 10-405 (2507), 10-406 (2508), 10-407 (2509), and 10-408 (2510), Revised Codes of Montana, 1947; and,

"Sections 54-206, 54-207, 54-208, and 54-209, Revised Codes of Montana, 1947; and,

"Sections 69-106 (2449), 69-108 (2451), 69-302, and 69-903 (2542), Revised Codes of Montana, 1947; and,

"Sections 71-701, 71-702, 71-703, 71-704, and 71-705, Revised Codes of Montana, 1947, are, and each of said sections is hereby repealed."

Effective Date

Section 29 of Ch. 264, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section 71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.
71-1004. Amounts of payments.
71-1008. Conformity with acts of federal government.

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payments shall be made under this act to any person who:

(a) Has silicosis, as defined in section 71-1001 of the Revised Codes of Montana of 1947, which results in his total disability so as to prevent him from engaging in a gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month.

(b) Has resided in and been an inhabitant of the state of Montana for ten (10) years, or more, immediately preceding the date of the application.

(c) Has silicosis and is entitled to payments under this act, but who is not at the time of receiving a payment an inmate of a penal institution, or is not a patient or inmate of any institution for the treatment of mental diseases, or is not a patient in a medical institution as a result of having been diagnosed as having a psychosis. If the person to whom payment has been ordered to be paid is an inmate of Montana state tuberculosis sanatorium, then and in that case the payment herein provided for shall be made to his wife and children, if any.

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the workmen's compensation act of the state of Montana, which will equal the sum of sixty-five dollars ($65.00) hereunder. If he is receiving payments under the workmen's compensation act which is less in the aggregate than sixty-five dollars ($65.00), then he is entitled to a payment under this act of the difference between the amount received under the workmen's compensation act and sixty-five dollars ($65.00) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955.

Amendment

The 1955 amendment in subd. (a) substituted "section 71-1001 of the Revised Codes of Montana of 1947" for "this chapter" in the first sentence and inserted "but shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month" at the end of the second sentence; in subd. (c) substituted the first sentence for one which read "Is at the time of receiving a payment under this chapter an inmate of any public medical institution, except any institution for the treatment of mental diseases or penal in-

stitution"; in subd. (d) in the first sentence substituted "act" for "chapter" and "sum of sixty-five dollars ($65.00)" for "fifty ($50.00) dollars payment allowed" and substituted the second sentence for one which read "If he is receiving payments from either or both of these plans which is less in the aggregate than fifty ($50.00) dollars per month, then if he is entitled to a payment under this chapter that payment shall be the difference between the amount which he is receiving under these plans and fifty ($50.00) dollars per month."

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this part, and who has, subject to the regulations and standards of the state and county departments, been determined by the state department to be entitled to a payment under this part for silicosis, shall be granted a payment by the said state department of sixty-five dollars ($65.00) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955.

Amendment

The 1955 amendment inserted the words "Subject to the provisions of this act and the deductions herein provided" at the beginning of this section and raised the amount of payment from $60 to $65.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the public welfare department of the state of Montana is hereby authorized to administer in the state of Montana such grants in aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed sixty-five dollars ($65.00) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955.

Amendment

The 1955 amendment raised the amount of maximum payment from $60 to $65.

Repealing Clause

Section 4 of Ch. 252, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 252, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

CHAPTER 12—PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

Section 71-1201. Provision for administration.
71-1206. County share of participation.

71-1201. Provision for administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to the permanently and totally disabled under the powers, duties and functions as prescribed in sections 71-201 through 71-232, Revised Codes of Montana, 1947.

(b) The county departments of public welfare are hereby charged with the local administration and supervision of aid to the permanently

and totally disabled subject to the powers, duties and functions prescribed for the county departments in sections 71-201 through 71-232, Revised Codes of Montana, 1947.

(c) It is hereby mandatory and required that the state plan and operation of aid to the permanently and totally disabled shall be in effect in each and every county of the state and that the administration and supervision of aid to the permanently and totally disabled shall be uniform throughout the several counties of the state.

(d) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.

(e) Aid to the permanently and totally disabled, as used in this chapter, means money payments to or payments made for medical care in behalf of needy individuals eighteen (18) years of age or over who are permanently and totally disabled.

History: En. Sec. 1, Ch. 160, L. 1951; amd. Sec. 9, Ch. 71, L. 1957.

Amendment

The 1957 amendment in subd. (d) deleted the words "the federal social security administration and" which appeared after the words "All rules and regulations of" and in subd. (e) inserted the words "or payments made for medical care in behalf of."

71-1206. County share of participation. Each county department shall reimburse the state department in the amount of two-thirds (2/3) of the approved aid to the permanently and totally disabled grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Each county department shall reimburse the state department in the amount of seventy-five per cent (75%) of the portion of such grants that is not included within the provisions of the first sentence of this section. Such reimbursements shall be credited to the aid to the permanently and totally disabled account of the state department. Payments for medical care in behalf of recipients of aid to the permanently and totally disabled shall not be subject to the above provisions.

History: En. Sec. 6, Ch. 160, L. 1951; amd. Sec. 10, Ch. 71, L. 1957.

Amendment

The 1957 amendment added the last sentence.

Repealing Clause

Section 11 of Ch. 71, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—SERVICES TO THE BLIND

Section 71-1401. Definitions.
71-1402. Administrator.
71-1403. Supervisor—duties.
71-1404. Administration.
71-1405. Cooperation with federal government.
71-1406. Receipt and disbursement of federal funds.
71-1407. Gifts.
71-1408. Eligibility for vocational rehabilitation services.
71-1409. Eligibility for rehabilitation services.
71-1410. Maintenance not assignable.
71-1411. Hearings.
71-1412. Misuse of lists and records.

71-1413. Saving clause.
71-1414. Appropriation authorization.
71-1415. Short title.

71-1401. Definitions. As used in this act:

(a) "State department" means the state department of public welfare.

(b) "State board" means the state board of public welfare.

(c) "Administrator" means the administrator of the state department of public welfare.

(d) "Supervisor" means the supervisor of the program of services for the blind.

(e) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.

(f) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks including, but not limited to, services of the type described in subsection (d) hereof.

(g) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap including but not limited to, manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(h) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(i) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(j) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(k) "Business licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in a business.

(l) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.

(m) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees; or who has other eye conditions which render vision equally defective; or who has an eye condition which will cause blindness.

History: En. Sec. 1, Ch. 167, L. 1955.

Title of Act

An act relating to vocational rehabilitation and related services for the blind; establishing a plan for cooperation with the federal government in such services; providing for administration of the program by the public welfare department; defining terms; establishing standards of eligibility; repealing conflicting acts.

71-1402. Administrator. The program shall be administered, under the general supervision and direction of the state department, by a supervisor and such other staff as designated by the administrator in accordance with established personnel standards of the state department and on the basis of their education, training, experience and demonstrated ability.

History: En. Sec. 2, Ch. 167, L. 1955.

71-1403. Supervisor—duties. In carrying out his duties under this act, the supervisor:

(a) shall, with the approval of the state department, make regulations governing the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation and other services, procedures for fair hearings and such other regulations as he finds necessary to carry out the purposes of this act;

(b) shall, with the approval of the administrator establish appropriate subordinate administrative units;

(c) shall, with the approval of the state administrator, take such other action as he deems necessary or appropriate to carry out the purposes of this act.

History: En. Sec. 3, Ch. 167, L. 1955.

71-1404. Administration. Except as otherwise provided by law, the state department, shall provide the services authorized by this act to blind individuals determined by the supervisor to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:

(a) cooperate with other departments, agencies and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;

(b) enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;

(c) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals.

History: En. Sec. 4, Ch. 167, L. 1955.

71-1405. Cooperation with federal government. The state department, may cooperate, pursuant to agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to the purposes of this act and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History: En. Sec. 5, Ch. 167, L. 1955.

71-1406. Receipt and disbursement of federal funds. The state treasurer is hereby designated as the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to the purposes of this act. The state treasurer shall make disbursements from such funds and from all state funds available for such purposes upon certification of the administrator in accord with the regulations so provided.

History: En. Sec. 6, Ch. 167, L. 1955.

71-1407. Gifts. The administrator is hereby authorized and empowered, with the approval of the state board, to accept and use gifts made unconditionally by will or otherwise for the purposes of this act. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of this act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 7, Ch. 167, L. 1955.

71-1408. Eligibility for vocational rehabilitation services. Vocational rehabilitation services shall be provided to any blind individual (1) who, at the time of filing his application therefor, resides in the state for other than a temporary purpose, and whose vocational rehabilitation the supervisor determines, after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government; provided that, except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state department thereunder, the following vocational rehabilitation services shall be provided at public cost only to blind individuals found to require financial assistance with respect thereto:

(a) Physical restoration.

(b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.

(c) Occupational and business licenses.

(d) Tools, equipment, initial stock and supplies, including livestock and capital advances.

(e) Training books and materials.
(f) Maintenance.

History: En. Sec. 8, Ch. 167, L. 1955.

71-1409. Eligibility for rehabilitation services. Rehabilitation services shall be provided to any blind individual (a) who, at the time of filing his application therefor resides in the state for other than a temporary purpose, (b) who the supervisor, after full investigation, determines can be assisted, through the provision of such services, to achieve a more useful and purposeful life, or (c) who is eligible therefor under the terms of an agreement with another state or with the federal government.

History: En. Sec. 9, Ch. 167, L. 1955.

71-1410. Maintenance not assignable. The right of any individual to maintenance under this act shall not be transferable or assignable at law or in equity.

History: En. Sec. 10, Ch. 167, L. 1955.

71-1411. Hearings. Any individual applying for or receiving vocational rehabilitation or any other services authorized by this act who is aggrieved by any action or inaction of the state department shall be entitled, in accordance with regulations, to a fair hearing by the state department.

History: En. Sec. 11, Ch. 167, L. 1955.

71-1412. Misuse of lists and records. It shall be unlawful, except for purposes directly connected with the administration of the programs authorized by this act, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation or any other services authorized by this act, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

History: En. Sec. 12, Ch. 167, L. 1955.

71-1413. Saving clause. The legislative assembly reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislative assembly to amend or repeal this act at any time.

History: En. Sec. 15, Ch. 167, L. 1955.

71-1414. Appropriation authorization. There are hereby authorized to be included in the appropriations for the state department such sums as may be necessary to carry out the provisions of this act.

History: En. Sec. 16, Ch. 167, L. 1955.

71-1415. Short title. This act may be cited as the "Services to the Blind Act" of Montana.

History: En. Sec. 17, Ch. 167, L. 1955.

Separability Clause

Section 14 of Ch. 167, Laws 1955 read "Separability. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances shall not be affected thereby."

Repealing Clause

Section 13 of Ch. 167, Laws 1955 repealed all other laws or parts of laws in conflict therewith.

TITLE 72—RAILROADS

Chapter 1. Railroads—regulation by board of railroad commissioners, 72-164.
6. General regulation of business of railroads, 72-668 to 72-670.

CHAPTER 1—RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

Section 72-164. Railroad commission may order electric signal bells installed.

72-101. (3779) Creation of commission.

Vacancy

The time limitations prescribed in section 23-809 which provides the secretary of state shall certify to the various county clerks the names of persons nominated for election not less than 45 days nor more than 90 days before the election, has no application to an election to fill a vacancy created by the resignation of a regularly elected railroad commissioner where, such commissioner defers and withholds the effective date of his resignation until but 32 days remain between such effective date and the day of the general election. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

The provisions of section 23-809, a general statute, are in conflict with the special provisions of this section, a special statute, which applies specifically and exclusively to the filling of vacancies occurring in the board of commissioners of the state of Montana. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 646.

There can be no special election to elect the governor's appointee's successor under this section, for the result of a special election could oust the governor's appointee prior to the next general election held next after such appointee's appointment and qualification. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

The office of railroad commissioner is one that is required to be filled by the voters at the general elections held biennially, and it is only when a vacancy occurs that a temporary appointment is authorized to stop the gap and permit the board to continue to function with three members until the electors are presented with their first opportunity to select the appointee's successor which opportunity is afforded under the law at the next general election held following the occurrence of the vacancy. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 646.

72-118. (3796) Power to alter classification or rate—hearing complaint.

Change in Rates

Advantage, preference or discrimination standing alone is not sufficient justification for interference with intrastate rates. It is only undue or unreasonable advantage, preference or prejudice, or undue, unreasonable or unjust discrimination that justifies intervention by the interstate commerce commission. Montana Citizens F. R. Assn. v. Board of R. R. Comrs., 128 M 127, 271 P 2d 1024, 1030.

Disparity between Interstate Rates and Intrastate Rates

The consequences of an intrastate rate increase by the state board are quite different from the standpoint of a shipper from an interstate rate increase by the interstate commerce commission. The reason for this difference is that the interstate commerce commission has the power and authority to declare a rate unreasonable or discriminatory retroactively and to compel reparation to a shipper who has paid freight charges in excess of a reasonable rate. The state board has no such authority. Consequently, the state board should require independent proof on matters essential to warrant an increase in intrastate rates and charges and should not assume that the intrastate rate was properly related to the interstate rate prior to the change made in the latter and that to maintain this relationship the intrastate rate had to be increased exactly the same as the interstate rate. Montana Citizens F. R. Assn. v. Board of R. R. Comrs., 128 M 127, 271 P 2d 1024, 1027.

The state board has no authority to grant an automatic raise in intrastate rates simply because the interstate commerce commission had granted a raise in interstate rates. The mere disparity between the interstate rates and the intrastate rates does not compel the state board to grant an increase so as to remove the disparity. Montana Citizens F. R. Assn. v. Board of R. R. Comrs., 128 M 127, 271 P 2d 1024, 1027.

72-119. (3797) General powers of board.

References

Cited or applied in Great Northern Ry. v. Board of Railroad Comrs., — M —, 298 P 2d 1093, 1094.

72-123. (3801) Power to compel railroad companies to provide, etc.

Discontinuance of Service

An order of the board that there should be no curtailment or discontinuance of passenger train service between points within the state except where authorized by commission is valid under the statute and in line with authorities that a public utility may not discontinue its service without approval of the public service commission. Great Northern Ry. v. Board of Railroad Comrs., — M —, 298 P 2d 1093, 1094. (Dissenting opinion, — M —, 298 P 2d 1093, 1095.)

Railroad was not authorized to discontinue railway service between points within Montana without permission of the commission, although in an earlier petition by the railroad to discontinue such service the commission had ruled it had no jurisdiction. The erroneous ruling of the board that it had no jurisdiction over proceedings to abandon the service so far as it affected intrastate transportation did not justify the railroad in removing the trains. That order was subject to review and the obligation to have that order reviewed rested on the railway company as a necessary step to procure the consent of the board for the abandonment of the train service. Great Northern Ry. v. Board of Railroad Comrs., — M —, 298 P 2d 1093, 1095. (Dissenting opinion, — M —, 298 P 2d 1093, 1095.)

72-125. (3803) Court review of action of board—pleadings.

Obligation to Review

Where the board ruled that it had no jurisdiction in acting on a railroad's petition to discontinue service, the railroad was not authorized to discontinue such service between points within the state without the consent of the commission. The order was subject to review and the obligation to have that order reviewed rested on the railway company, as a necessary step to procure the consent of the board for the abandonment of the train service. Great Northern Ry. v. Board of Railroad Comrs., — M —, 298 P 2d 1093, 1095. (Dissenting opinion, — M —, 298 P 2d 1093, 1095.)

References

Cited in Montana Citizens F. R. Assn. v. Board of R. R. Comrs., 128 M 127, 271 P 2d 1024, 1027.

72-132. (3809) Action to determine reasonableness of rates, etc.

Appellant Review

The findings of the board are by law deemed prima facie just, reasonable and proper, and courts should ascribe to them the strength due to the judgments of a tribunal appointed by law and informed by experience. The board's conclusion is subject to review, but when supported by evidence is accepted as final. Chicago, M., St. P. & P. R. Co. v. Board of R. R. Comrs., 126 M 568, 255 P 2d 346, 350.

Requiring Continuation of Service at a Loss

Where convenience and necessity is found to exist, evidence of earnings and losses on its various services would be material before a railroad would be heard to complain that a service is an undue burden on interstate commerce or that in rendering the service there is an unlawful taking of property without due process of law. Chicago, M., St. P. & P. R. Co. v. Board of R. R. Comrs., 126 M 568, 255 P 2d 346, 352.

The fact that several trains are run at a loss, is not, standing alone, sufficient to justify the discontinuance of the trains in question. It has long been settled that a requirement that a particular service be rendered at a loss does not make a service confiscatory and thereby an unconstitutional taking of property. The Constitution does not grant to a railroad company a continuing privilege of exercising its franchise and at the same time permit it to escape from the duties incidental to it. Chicago, M., St. P. & P. R. Co v. Board of R. R. Comrs., 126 M 568, 255 P 2d 346, 351.

72-133. (3810) Action by shippers.

References

Cited in Montana Citizens F. R. Assn. v. Board of R. R. Comrs., 128 M 127, 271 P 2d 1024, 1027.

72-155. (3832) **Action to determine reasonableness of rule.**

References

Cited or applied in Chicago, M., St. P. & P. R. Co. v. Board of R. R. Comrs., 126 M 568, 255 P 2d 346, 349.

72-164. (3842) **Railroad commission may order electric signal bells installed.** Authority is hereby given to the board of railroad commissioners of the state of Montana upon petition in writing made to it by any board of county commissioners of the state of Montana, to order railroad companies to install and maintain an electrically operated bell or other signalling device at all points in the state of Montana where the main lines, spurs, or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the state of Montana, and where the contour of the country adjacent to said crossing is such that a person approaching same along said highway cannot, at a distance of twenty-five (25) feet of said crossing, obtain an unobstructed view of said railroad track for a distance of one half (½) mile on either side of said crossing; or where any other hazardous conditions exist which make it advisable that electric signalling devices be installed; provided, however, all persons driving motor vehicles upon the public highways of this state, outside of corporate limits of incorporated cities or towns, where the view is obscure, or when a moving train is within sight or hearing, shall bring said vehicle to a full stop not less than ten (10) nor more than one hundred (100) feet from where said highway intersects railroad tracks within this state, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

History: En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1957.

Amendment

The 1957 amendment inserted the words "or where any other hazardous conditions exist which make it advisable that electric signalling devices be installed."

Repealing Clause

Section 2 of Ch. 115, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 115, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

CHAPTER 6—GENERAL REGULATION OF BUSINESS OF RAILROADS

Section 72-668. Track motor cars—windshield—wipers—canopy on top.
72-669. Head and rear lights on track motor cars.
72-670. Violation—misdemeanor.

72-668. Track motor cars — windshield — wipers — canopy on top. Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars with:

(1) A windshield of safety glass and a device for wiping rain, snow and other moisture therefrom; such device shall be maintained in good

order, and so constructed as to be controlled by the operator of said track motor car, and

(2) Upon request of the foreman, a canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow, or other inclement weather.

History: En. Sec. 1, Ch. 109, L. 1957.

Title of Act

An act providing for installation of windshields of safety glass, windshield wipers, a canopy or top, and electric headlights and tail lights upon track motor cars operated by railroads running through or within this state as a common carrier and providing a penalty for violation thereof.

72-669. Head and rear lights on track motor cars. Every person, firm or corporation, operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars used during the period from thirty (30) minutes before sunset, to thirty (30) minutes after sunrise, with an electric headlight of such construction and with sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet in advance of such track motor car, any track obstruction, land mark, warning sign, or grade crossing, and further equip such track motor car with a red rear electric light of sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet.

History: En. Sec. 2, Ch. 109, L. 1957.

72-670. Violation—misdemeanor. Every violation of any section of this act is a misdemeanor.

History: En. Sec. 3, Ch. 109, L. 1957.

TITLE 73—RECORDING TRANSFERS

Chapter 1. Recording transfers—release of oil, gas and mineral leases, 73-104.

CHAPTER 1—RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES

Section 73-104. Letters patent and other federal and state documents to be recorded without acknowledgment.

73-104. (6892) **Letters patent and other federal and state documents to be recorded without acknowledgment.** Letters patent from the United States, or from the state of Montana, or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States, or the state of Montana, which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original, for title or for evidence, until the said original letters patent be recorded.

History: En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C, 1907; re-en. Sec. 6892, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1957. Cal. Civ. C. Sec. 1160.

Compiler's Note

Section 2 of Ch. 148, Laws 1957 amended 25-231.

Amendment

The 1957 amendment inserted the words "or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States, or the state of Montana, which evidence title to land or affect the title thereof."

TITLE 74—SALES AND EXCHANGE

CHAPTER 1—SALE AND AGREEMENTS FOR SALE

74-101. (7581) Sale defined.

References

Cited or applied in DeMers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

74-103. (7583) Agreement for sale.

References

Cited or applied in DeMers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

74-104. (7584) Agreement to sell.

Operation and Effect

A seller ordinarily may not sue for the purchase price of the property until title has passed to the buyer. The actual passing of a title, as between the parties to a contract of sale of personal property, depends upon the intention of the parties. DeMers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

CHAPTER 2—CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID—FILING—SEIZURE ON DEFAULT

74-203. (7593) Contract for sale of real property.

Memorandum

An endorsed bank check with the additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. Lewis v. Peterson, 127 M 474, 267 P 2d 127, 128.

CHAPTER 3—RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

74-321. (7618) Warranty of provisions for domestic use.

Measure of Damages

The applicable section governing the measure of damages when plaintiff's sheep died after eating feed sold by defendant is section 17-314 wherein defendant is liable for all damages that were foreseen, or could easily have been foreseen, as likely to result from the putting of the thing sold to the use for which it was sold. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 126 M 415, 252 P 2d 1040, 1045.

Sale—Determination

On a second appeal of a case where the evidence of the "sale" of sheep feed given in the second trial was the same as given in the first trial, the Supreme Court determination on the first appeal that the plaintiff's evidence was sufficient to make out a prima facie case of sale became the law of the case and binding upon the parties and the district court. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 126 M 415, 252 P 2d 1040, 1042.

CHAPTER 4—RIGHTS AND OBLIGATIONS OF BUYER—INSPECTION AND PAYMENT

74-401. (7622) Price—when to be paid.

References

Cited or applied in Bennett v. Dodgson, — M —, 284 P 2d 990, 994.

TITLE 75—SCHOOLS

Chapter 2. Residence halls at state educational institutions, 75-201 to 75-206.
3. Control of state educational, charitable and reformatory institutions, 75-312.
7. Montana state college—Montana wool laboratory—agricultural experiment stations, 75-732 to 75-738.
10. Western Montana college of education, 75-1006.
13. The public schools—superintendent of public instruction, 75-1320.
15. County superintendent of schools, 75-1522, 75-1523.
16. School trustees, 75-1632, 75-1632.1, 75-1637.
18. School districts, 75-1805, 75-1831.
19. Clerks of school districts—school census, 75-1904.
22. School day, month and year—holidays—constitution, pioneer and arbor day, 75-2204.
24. Teachers—powers and duties—election—dismissal, 75-2401.
27. Teachers' retirement system, 75-2707.
29. Compulsory school attendance—truant officers, 75-2901, 75-2902.
33. School busses—requirements—drivers' qualifications—construction and operation, 75-3308, 75-3310.
34. Transportation of pupils, 75-3403, 75-3407, 75-3412.
36. Uniform system of free public schools—state support—schedule of contributions, 75-3612, 75-3618.
39. Bonds, 75-3913.
41. High schools—county—junior and district—joint school systems, 75-4101, 75-4116.
42. High schools—county—junior and district—joint school systems continued—vocational education, 75-4231.
46. High school districts—public works, 75-4601, 75-4602.
50. Education classes for mentally and physically handicapped children, 75-5001 to 75-5007.
51. Federal aid, 75-5101, 75-5102.

CHAPTER 1—STATE BOARD OF EDUCATION—COMPOSITION, POWERS AND DUTIES

75-107. (836) Powers and duties.

Actions Ex Contractu against State Board of Education

The state board of education may be sued for a breach of contract without the consent of the state for the action. Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

Collateral References

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 ALR 2d 725.

Racial segregation in schools. 38 ALR 2d 1189.

CHAPTER 2—RESIDENCE HALLS AT STATE EDUCATIONAL INSTITUTIONS

Section 75-201. Erection of self-financing facilities at institutions controlled by the state board of education.
75-202. Title to be in name of state.
75-203. Provisions for carrying out powers.
75-204. State not to become obligated for payments.
75-205. Use of rents and income relating to institution—where derived.
75-206. State funds not to be used

75-201. (836.1) Erection of self-financing facilities at institutions controlled by the state board of education. At state institutions of higher

education under its control the state board of education, for the good of the institution concerned from time to time, is authorized to:

(a) Acquire, erect, equip, enlarge and improve residence halls, dormitories, dining rooms or halls, refectories, commons, health service buildings, armories, gymnasiums, auditoriums or theaters, field houses, student unions, game and entertainment properties, classroom or laboratory buildings, libraries, shops, storage buildings, and livestock or other arenas, or display or exhibition areas, or pavilions.

(b) Rent the rooms in such residence halls and provide board and other services to the students, officers, guests and employees of said institutions at such rates as will insure a reasonable excess of income over operating expenses as well as provide for debt service and reserves; and provide for the collection of charges, admissions, or fees for the use of other facilities by students and other persons, which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes of Montana, 1947, and may be collected from any or all students;

(c) Hold the funds derived from the operation of such residence halls and other facilities and devote the same to repairs, replacements, betterments, debt service, and reserves or, so far as the same may not be obligated, to the acquisition, erection, equipping, enlarging, or improvement of additional residence halls and other facilities; and

(d) Exercise full control and complete management of such residence halls and other facilities.

History: En. Sec. 1, Ch. 94, L. 1929; amd. Sec. 1, Ch. 291, L. 1947; amd. Sec. 1, Ch. 168, L. 1951; amd. Sec. 1, Ch. 226, L. 1953; amd. Sec. 1, Ch. 186, L. 1955.

Amendment

The 1955 amendment from subd. (a) deleted the words "and other educational, customary, related, or incidental facilities such as, but not limited to," which appeared between the words "residence halls" and "dormitories" and added after the words "storage buildings" the words "and livestock or other arenas, or display or exhibition areas, or pavilions"; in subd. (b) added the words "which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes of Montana, 1947, and may be collected from any or all students."

75-202. (836.2) **Title to be in name of state.** The title to all real estate and improvements acquired and erected under the provisions of this act shall be taken and held in the name of the state of Montana, except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid and except that title to real estate may be taken in the name of any of the governing boards of any of the state institutions of higher education subject to lease, pledge, mortgage, conveyance, or other or similar real estate or financial obligation or transaction by such board at any time to procure funds by borrowing or otherwise, or to provide security or satisfaction in whole or part for obligations incurred, for the purposes of the institution involved.

History: En. Sec. 2, Ch. 94, L. 1929; amd. Sec. 2, Ch. 226, L. 1953; amd. Sec. 1, Ch. 186, L. 1955.

Amendment

The 1955 amendment added the second exception clause.

75-203. (836.3) **Provisions for carrying out powers.** In carrying out the above powers, said board may:

(a) Borrow money for any purpose or purposes of this chapter, including, if deemed desirable by the state board of education, the payment of interest during construction and for one (1) year thereafter and the creation of a reserve for the payment of bond principal and interest; make purchases on a time or installment basis; refund bonds theretofore issued by the state board of education, including provision for the payment of any redemption premium thereon and any interest accruing or to accrue to the date of redemption thereof, any refunding bonds issued under the authority of this section to mature and to bear interest at such rate or rates as the state board of education shall deem to be for the best interests of the institution concerned; and combine for financing purposes any facilities mentioned in section 75-201;

(b) Pledge, issue notes, bonds, or other securities, negotiable or otherwise, secured by, otherwise obligate, or make purchases with the use of (1) the net income received from rents, board, or both in the residence halls and from other facilities, (2) receipts from student building, activity, union, and other special fees prescribed by the board, and (3) other income in the form of gifts, bequests, contributions, federal grants of funds including the proceeds or income from grants of lands or other real or personal property, receipts from athletic contests, and collections of admissions and other charges for the use of facilities;

(c) Make payments on loans or purchases from any other available income not obligated for such purposes including receipts from sales of materials, equipment, and fixtures, of such facilities or of sale of the facilities themselves other than land.

(d) Secure any bonds authorized hereunder by a trust indenture between the state board of education and any bank or trust company within or without the state of Montana; and

(e) Sell any bonds authorized hereunder in such manner and for such price as the state board of education, with the approval of the state board of examiners, shall determine.

History: En. Sec. 3, Ch. 94, L. 1929; amd. Sec. 2, Ch. 291, L. 1947; amd. Sec. 2, Ch. 168, L. 1951; amd. Sec. 3, Ch. 226, L. 1953; amd. Sec. 3, Ch. 186, L. 1955.

Amendment

The 1955 amendment substituted the present subd. (a) for one which read "(a) Borrow money or make purchases on a time or installment basis"; in subd. (b) substituted the words "notes, bonds, or other securities, negotiable or otherwise," for the words "negotiable bonds" and added subds. (d) and (e).

75-204. (836.4) **State not to become obligated for payments.** No obligation created hereunder shall ever be or become a charge against the state of Montana, but all such obligations, including the principal and interest thereon, shall be payable solely from the sources herein stated and authorized.

History: En. Sec. 4, Ch. 94, L. 1929; amd. Sec. 3, Ch. 291, L. 1947; amd. Sec. 3, Ch. 168, L. 1951; amd. Sec. 4, Ch. 226, L. 1953; amd. Sec. 4, Ch. 186, L. 1955.

Amendment

The 1955 amendment inserted the words "the" and "thereon" in the phrase "including the principal and interest thereon."

75-205. (836.5) **Use of rents and income relating to institution—where derived.** In creating or discharging obligations under the preceding sections, the facilities at one institution shall be treated separately from the facilities at another institution; and income available at one institution shall not be used to discharge obligations created for residence halls or other facilities at another institution.

History: En. Sec. 5, Ch. 94, L. 1929; amd. Sec. 4, Ch. 291, L. 1947; amd. Sec. 4, Ch. 168, L. 1951; amd. Sec. 5, Ch. 226, L. 1953; amd. Sec. 5, Ch. 186, L. 1955.

Amendment

The 1955 amendment substituted the words "the facilities at one institution shall be treated separately from the facilities at another institution" for the words "the residence and dining halls and related facilities at each institution shall be treated separately from other facilities at such institution" and deleted the words "for residence hall purposes and other facilities" which appeared after the words "income available."

75-206. (836.6) **State funds not to be used.** For the purposes authorized in the preceding sections no state funds appropriated by the legislative assembly for specific purposes other than those authorized in this chapter shall be used or obligated. This shall not apply however to funds derived from the sources specified in subsection (b) of section 75-203.

History: En. Sec. 6, Ch. 94, L. 1929; amd. Sec. 5, Ch. 291, L. 1947; amd. Sec. 5, Ch. 168, L. 1951; amd. Sec. 6, Ch. 226, L. 1953; amd. Sec. 6, Ch. 186, L. 1955.

Amendment

The 1955 amendment deleted a former last sentence which read "The net rents and income of residence halls shall not be used to discharge loans or obligations of any field house."

Repealing Clause

Section 7 of Ch. 186, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 186, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

CHAPTER 3—CONTROL OF STATE EDUCATIONAL, CHARITABLE AND REFORMATORY INSTITUTIONS

Section 75-312. Budget committee.

75-301. (841) **General control of state institutions.**

References

Cited in Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 982.

75-302. (842) **Local executive boards—creation, residence and powers.**

References

Cited in Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

75-307. (847) **Powers and duties.**

Actions Ex Contractu against State Board of Education

The state board of education may be sued for a breach of contract without the consent of the state for the action. Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

75-312. Budget committee. That the state board of education shall have the power and it shall be its duty to appoint each two (2) years, a budget committee composed of four (4) members selected from the appointive members of the board, whose duties shall be to review the budget

requests presented by the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school and Montana state school for the deaf and blind, and to transmit such requests to the board together with recommendations thereon.

History: En. Sec. 1, Ch. 25, L. 1957.

Title of Act

An act empowering the board of education to appoint biennially a budget committee to review budget requests of the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school and Montana state school for the deaf and blind; to transmit a report of such requests together with its recommendations to the board of education; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 25 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—MONTANA STATE COLLEGE—MONTANA WOOL LABORATORY—AGRICULTURAL EXPERIMENT STATIONS

Section 75-732. Coal utilization experiment project—purpose.
75-733. Establishment of project.
75-734. Supervision and responsibility of project—reservation to state of patents.
75-735. Purchase of sites or experimental farms—money for.
75-736. Moneys apportioned from endowment funds not to be applied towards buildings.
75-737. Approval and essentiality of sites or experimental farms.
75-738. Limitation on total amount expended for sites or experimental farms.

75-732. Coal utilization experiment project—purpose. It is the intention of the legislative assembly by this act to encourage and assist in the project for the study of commercial utilization of Montana's coal and lignite being conducted at Montana state college, to maintain and improve the present ten ton per day demonstration char plant now located at the state college, and to encourage the industrial development of Montana, and industrial utilization of Montana's natural resources; to point the way to development of the vast coal and lignite deposits now lying unutilized.

History: En. Sec. 1, Ch. 180, L. 1955.

Title of Act

An act to encourage industrial development in Montana; appropriating funds to continue experiments and studies by the engineering experiment station for commercial utilization, classification and testing for such utilization, Montana's vast coal and lignite resources.

75-733. Establishment of project. There is hereby established at the Montana state college at Bozeman an experiment project for the purpose of procuring and testing samples of coal and lignite from the various coal and lignite fields throughout Montana, and for carrying out effective scientific and practical research work to the end of developing as complete and accurate a knowledge of Montana's coal and lignite; and the various processes for commercial utilization of such coal and lignite, including the continuation of present experiments in the conversion of coal and lignite into coal chemicals and chars.

History: En. Sec. 2, Ch. 180, L. 1955.

75-734. Supervision and responsibility of project—reservation to state of patents. The experimental project shall be under the supervision and direction of the engineering experiment station of Montana state college,

and the director of the engineering experiment station shall have general supervision control and responsibility over the functions of the coal utilization experiment project, and is directed to keep complete records and files on the said project and to make available such records and information to the public and to private industries now developing or which may in the future seek to develop the coal and lignite resources of Montana; provided, however, there shall be reserved to the state of Montana such patent or other rights, as may be availed of, by reason of said experiment project.

History: En. Sec. 3, Ch. 180, L. 1955.

Appropriation

Section 4 of Ch. 180, Laws 1955 read "In order to continue present experimentation on development of commercial utilization of coal and coal by-products and to pay for repair or replacement of the equipment used in such project, salaries, materials and expenses of the said project, there is hereby appropriated out of any money in the general fund of the state of Montana not otherwise appropriated, for the fiscal year beginning July 1, 1955, and ending June 30, 1956, the sum of twenty thousand dollars ($20,000.00); and for the fiscal year beginning July 1, 1956, and ending June 30, 1957, the sum of twenty thousand dollars ($20,000.00). Payments from such appropriations are to be made in the same manner as are other payments from funds appropriated to Montana state college."

Repealing Clause

Section 5 of Ch. 180, Laws 1955 repealed all acts and parts of acts in conflict therewith.

75-735. Purchase of sites or experimental farms—money for. That the state board of education, acting for and on behalf of Montana state college of Bozeman, Montana, make available for the purchase of sites or experimental farms from any funds deposited in the Montana trust and legacy fund credited to the Montana state college through provisions of the Morrill Land Act of 1862 and known as the Agricultural College Morrill Permanent Fund, a sum not to exceed ten per centum (10%) of the amount of such fund in accordance with the provisions of the Morrill Act of July 2, 1862.

History: En. Sec. 1, Ch. 248, L. 1955.

Title of Act

An act to authorize the state board of education, on behalf of Montana state college, to use not to exceed ten per centum (10%) of the amount received under the provisions of the First Morrill Act passed by the United States Congress July 2, 1862, from the sale or other permanent disposition of lands granted to the state for endowment of Montana state college for the purchase of needed lands for sites or experimental farms as provided in section five (5) of the Act of July 2, 1862, as amended.

75-736. Moneys apportioned from endowment funds not to be applied towards buildings. No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation or repair of any building or buildings.

History: En. Sec. 2, Ch. 248, L. 1955.

75-737. Approval and essentiality of sites or experimental farms. Any sites or experimental farms purchased in accordance with the provisions of this act must first be approved by the state board of education with the approval of the Montana state college advisory council, and be essential for the effective operation of the instructional and research programs of the Montana state college and the agricultural experiment station.

History: En. Sec. 3, Ch. 248, L. 1955.

75-738. Limitation on total amount expended for sites or experimental farms. The total amount which may be used for purchase of needed lands for sites or experimental farms under the provisions of this act may not exceed ten per centum (10%) in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent account in the Montana trust and legacy fund.

History: En. Sec. 4, Ch. 248, L. 1955.

CHAPTER 10—WESTERN MONTANA COLLEGE OF EDUCATION

Section 75-1006. Acceptance of public lands.

75-1006. (929) Acceptance of public lands. The state board of education, herein mentioned, and their successors, shall receive, in the names of western Montana college of education and eastern Montana college of education, all the benefits, of whatsoever nature, that may be derived from the distribution and selection of lands contemplated in section 17 of an act of Congress, approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," and the state board of education is hereby authorized in carrying out the provisions of chapter 2 of Title 75 of the Revised Codes of Montana, 1947, as now amended, or as hereafter amended, to pledge one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the board for residence halls or other facilities at western Montana college of education, and one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the board for residence halls or other facilities at eastern Montana college of education; provided, however, that any such pledge shall be subject to any prior pledge by the board of any such interest and income. Provided further that all pledges of income and interest funds must have the final approval of the state board of examiners.

History: En. Sec. 4, p. 180, L. 1893; re-en. Sec. 1655, Pol. C. 1895; re-en. Sec. 775, Rev. C. 1907; re-en. Sec. 929, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1957.

Amendment

The 1957 amendment substituted "in the names of western Montana college of education and eastern Montana college of education" for "in the name of the state normal school hereby established" and added all that portion of this section beginning after the quoted act of Congress.

Repealing Clause

Section 2 of Ch. 19, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 19, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 19, 1957.

CHAPTER 11—EASTERN MONTANA COLLEGE OF EDUCATION

75-1103. (930.3) **Control and management of school.**

References

Cited or applied in Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

CHAPTER 13—THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-1320. Elementary school supervisor.

75-1320. Elementary school supervisor. The state superintendent of public instruction with the approval of the state board of education shall appoint one elementary supervisor for the state, whose duty it shall be to inspect and supervise the work of the elementary schools of the state and to report from time to time such information concerning the same as the state superintendent of public instruction may require. These duties shall not be in conflict with the duties of the rural school supervisor. The elementary supervisor shall have at least the qualifications required by law for a county superintendent of schools and shall hold office for such term and at such salary as the state superintendent with the approval of the state board of education may fix. The salary and expenses of such elementary supervisor shall be paid out of moneys appropriated for the support of the state department of public instruction.

History: En. Sec. 1, Ch. 162, L. 1957.

Title of Act

An act to provide for an elementary school supervisor in the state department of public instruction; to provide for the appointment; defining his duties and qualifications; and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 162, Laws 1957 repealed all acts and parts of acts in conflict herewith.

CHAPTER 15—COUNTY SUPERINTENDENT OF SCHOOLS

Section 75-1522. Abandonment of school districts.
75-1523. Census reports to be transmitted to superintendent of public instruction—penalty.

75-1518. (966) **Controversies.**

References

Cited or applied in State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 217.

75-1522. (970) **Abandonment of school districts.** (1) He shall attach to contiguous districts territory not a part of any district except as hereinafter provided, and he must declare a school district abandoned when a school has not been operated in the district during a period of three (3) consecutive years. The county superintendent in determining the question of abandoning any school district under this act must include any period of time that may have elapsed before the approval of this act; provided, however, that the county superintendent of schools shall notify each school district which has not operated a school for two (2) years, that the nonoperation of a school for another year will bring about abandonment. Failure of the county superintendent to give such notification does not, however, protect the district from abandonment; provided

further, that if any such school district has provided transportation either by bus or by the payment to individuals, or has provided payments for board and room in lieu of transportation for an average of at least three (3) children of school age during a period of three (3) consecutive years living within the district, to another district for the purpose of attending school therein for a term of at least one hundred eighty (180) days each year, such transportation shall be deemed equivalent to the actual holding of school in such district for a term of one hundred eighty (180) days in each year, and such district shall not be ordered abandoned.

(2) The abandoned territory shall be attached to a contiguous district or districts. Whenever there are five (5) or more children in abandoned territory eligible for attendance in an elementary school as determined by the county superintendent and residing more than three (3) miles from an established school in the district to which the abandoned territory is attached, the school trustees shall provide a school in such abandoned territory when requested so to do by the parents of at least three (3) of such children. In determining whether such children reside more than three (3) miles from an established school in the district, the measurement must be by the shortest regularly traveled route. Whenever a school district is ordered abandoned and there is any indebtedness outstanding against the district represented either by registered warrants, or bonds, or both, and there is not sufficient money in the funds of the district to pay the same, all money in the funds of the district shall be set aside and applied in payment of such indebtedness, and there shall be levied annually, in the manner provided by law, a tax against all property within the boundaries of such district, as the same existed when such indebtedness was incurred, sufficient to pay such indebtedness as it matures, with all interest becoming due thereon.

(3) All funds of an abandoned district, after all the debts of the district have been paid, shall be placed in the general fund of the district or districts to which its territory is attached on order of the county superintendent. If the territory of an abandoned district is divided and a part attached to two (2) or more districts, the funds of the abandoned district, after all its debts have been paid, shall be apportioned by the county superintendent between the district to which such territory is attached in proportion to the assessed value of the property attached to each thereof. The school buildings, if any, in the abandoned territory, shall not be disposed of or removed unless approval for disposal or removal is given by a majority vote of the residents of the abandoned district present at a meeting in such school buildings, such meeting to be duly called by the board of trustees of the consolidated district. The county superintendent shall have power to declare a school district abandoned when there is an insufficient number of residents of said district who could qualify or when the available residents refuse to qualify in sufficient number as trustees and clerk for said district so that no legal board can be formed or a quorum obtained so that meetings of a board of trustees of such district can be held. Whenever a school district is ordered abandoned upon order of the county superintendent of schools in such case, then he shall attach said school district to a contiguous district or districts as herein provided.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 970, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1929; amd. Sec. 1, Ch. 84, L. 1931; amd. Sec. 1, Ch. 168, L. 1943; amd. Sec. 1, Ch. 109, L. 1951; amd. Sec. 1, Ch. 242, L. 1955.

Amendment

The 1955 amendment in subd. (1) substituted "three (3) children" for "five (5) children" and in subd. (3) inserted the third sentence.

Repealing Clause

Section 2 of Ch. 242, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 242, Laws 1955 provided the act should be in effect on and after its passage and approval. Approved March 10, 1955.

Collateral References

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

75-1523. (971) **Census reports to be transmitted to superintendent of public instruction—penalty.** It shall be the duty of the county superintendent of schools to transmit within thirty (30) days after he receives the school census from the district clerk, the duplicate copy of the census furnished by the clerk showing the name, sex, age, and the date of birth of each child under twenty-one (21) years of age residing in the county, together with the names of the parents or guardians of such children to the superintendent of public instruction, together with such other census reports as the latter may require. No county superintendent shall be paid his salary for the last two months of his official year until he presents to the county commissioners receipts from the superintendent of public instruction for such annual census reports.

History: En. Sec. 1, Ch. 17, L. 1907; Sec. 838, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 971, R. C. M. 1921; amd. Sec. 3, Ch. 118, L. 1927; amd. Sec. 1, Ch. 141, L. 1955.

Amendment

The 1955 amendment at the end of the first sentence substituted the words "superintendent of public instruction, together with such other census reports as the latter may require" for "commissioner of the bureau of labor and industry. He shall also transmit to the superintendent of public instruction in the year 1927 a duplicate of his alphabetical card index of the school census on uniform blanks provided by the superintendent of public instruction, and every year thereafter cards for all new names shall be forwarded for insertion in the state file of the superintendent of public instruction, together with a list of eliminations of names from previous years" and deleted from the end of the last sentence the words "and index of census list."

CHAPTER 16—SCHOOL TRUSTEES

Section 75-1632. Duties of trustees.
75-1632.1. Trustees of school districts annually to decide by whom audit to be made.
75-1637. Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when.

75-1603. (987) **Elections.**

References

Cited or applied in State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 999.

75-1606. (990) **Election in districts of first class—nominations, etc.**

Time for Nomination

In computing whether a nomination was made at least 40 days before the day of election, resort must be had to the legislative enactment, section 90-407, which requires that in computing time you exclude

the first day and include the last day; thus where date of election was April 3, 1954 the last day for nominating meetings was February 22. State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Pericich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

75-1632. (1015) **Duties of trustees.** Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1 to 23. * * * [Subdivisions 1 to 23, same as parent volume.]

24. To provide for a system of bookkeeping and annual auditing of extracurricular funds; such bookkeeping system to be recommended by the state bank examiner and such audit to be made by a qualified accountant or by the state bank examiner if so requested. If the audit is made by the state bank examiner, then, there shall upon completion of the audit, be paid a fee of thirty dollars ($30.00) per day per man, together with actual transportation expenses, into the state treasury, and the state treasurer shall accredit such payment to the special examiner's fund. A certified copy of such audit shall be filed with the county superintendent of schools, and notice of such filing and the availability of the audit to public inspection, shall be published by said superintendent in the next publication of a newspaper published within the district, or, in case there be no paper published within the district, in a newspaper published within the county, if any, and if none within the county then in the nearest newspaper published in an adjoining county and payment of such publication and audit shall be made from the extracurricular funds or from school district funds, as the board of trustees may decide.

History: Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130, L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953; amd. Sec. 1, Ch. 228, L. 1955.

Amendment

The 1955 amendment in the second sentence of subd. 24 deleted the words "from the extra curricular funds" which appeared before the words "a fee of thirty dollars" and in the third sentence inserted the words "notice of such filing and the availability of the audit to public inspection," "and audit" and "or from school district funds, as the board of trustees may decide."

75-1632.1. Trustees of school districts annually to decide by whom audit to be made. On or before the first (1st) day of January, 1954, and annually thereafter, the board of trustees of each school district coming under the provisions of this act, shall decide whether the aforesaid audit shall be made by the state examiner or by a qualified accountant to be employed by the district, and shall cause notice of its decision to be given to the state examiner.

History: En. Sec. 2, Ch. 233, L. 1953; amd. Sec. 2, Ch. 228, L. 1955.

Compiler's Note

Although Sec. 2 of Ch. 228, Laws 1955 did not specifically amend this section, yet the subject-matter was almost identical therewith. Therefore, the compiler has given the section the same section number. The change made by the 1955 Act was the substitution of "qualified accountant" for "certified public accountant."

Repealing Clause

Section 3 of Ch. 228, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 228, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

75-1637. (1016) **Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when.** It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing, repairing, or other work, for the benefit of the district, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, except:

(a) A board of trustees of third class school districts maintaining one (1) or two (2) room elementary schools, may contract, without advertising and without bids, where the amount involved is not more than four hundred dollars ($400.00);

(b) A board of trustees of third class school districts, other than those mentioned in subparagraph (a) may contract, without advertising and without bids, where the amount involved is not more than seven hundred and fifty dollars ($750.00);

(c) A board of trustees of districts of the first and second class maintaining elementary schools only, may contract without advertising and without bids where the amount involved is not more than one thousand two hundred and fifty dollars ($1,250.00);

In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids.

History: Ap. p. Sec. 1802, Pol. C. 1895; re-en. Sec. 882, Rev. C. 1907; amd. Sec. 1, Ch. 32, L. 1909; amd. Sec. 509, Ch. 76, L. 1913; re-en. Sec. 1016, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1955.

Amendment

The 1955 amendment in the second sentence deleted the words "where the amount involved is two hundred and fifty dollars, or more" which appeared between the words "district" and "without"; at the end of the same sentence after the word "work" deleted "and the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids" and inserted the word "except:" and added new subds. (a) to (c).

CHAPTER 18—SCHOOL DISTRICTS

Section 75-1805. Creation of new districts out of other districts—change of boundaries.
75-1831. Examination of school district books—accounting methods to be prescribed—reports.

75-1805. (1024) **Creation of new districts out of other districts—change of boundaries.** (1) A new school district may be created out of portions of one (1) or more existing school districts where the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property remaining in each district from which territory is taken is not reduced below seventy-five thousand dollars ($75,000.00) and where the number of census children between the ages of six (6) and sixteen (16) years is not reduced below fifteen (15). For the purpose of organizing a new school district out of one (1) or more existing districts, a petition in writing shall be made to the county superintendent of schools, signed by parents or guardians of at least ten (10) census children between the ages of six (6) and sixteen (16) years, residing within the boundaries of the proposed new district, and residing at a greater distance than three (3) miles from any schoolhouse owned by any one of such school districts in which a school is maintained. The petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing therein at the date of the presenting of said petition. The petition shall also show the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of the property within the proposed new district which must not be less than seventy-five thousand dollars ($75,000.00) as shown by the last completed assessment roll. Provided, however, that said provision as to the minimum remaining taxable valuation of each district from which territory is taken shall not apply in a case where such district has at least fifty thousand (50,000) acres of nontaxable Indian land remaining within its borders and provided, further, that said provision as to the minimum taxable valuation of such proposed new district shall not apply where such proposed district contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(2) The county superintendent shall within five (5) days from the receipt of such petition give notice of the hearing of said petition by posting or causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by him for consideration of said petition, in at least three (3) of the most public places in the proposed new district and one (1) on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one (1) of the most public places in each of said old districts; and shall on the day fixed in the notice proceed to hear said petition at the place designated in said notice, which must be either at the courthouse of the county or else at the schoolhouse in one of the school districts affected, unless a protest in writing signed by at least a majority of the school electors residing within such proposed school district shall be filed with the county superintendent of schools before or at the time fixed in the notice for the hearing of said petition, in which event the proposed school district shall not be created. If no such protest be filed, then the county superintendent, upon hearing the petition, shall within ten (10) days from the date of such hearing, make an order establishing the new district and describing the boundaries thereof, or make an order denying such petition.

(3) An appeal may be taken to the board of county commissioners of

the county, from either order made as aforesaid by three (3) resident taxpayers of either the old or the new district who are dissatisfied with said order. Such appeal shall be taken within thirty (30) days of the date of such order and upon the hearing of said matter by the board of county commissioners, a decision shall be rendered which shall be final. The appeals mentioned in this section shall be in writing, subscribed by the parties taking the appeal and shall recite sufficient facts to show their rights to appeal hereunder, and that it is an appeal from the decision rendered, and such an appeal shall be filed with the county superintendent within thirty (30) days from the date of the order establishing such new district or denying such petition. The county superintendent shall, within twenty (20) days from the filing of such notice of appeal transmit to the board of county commissioners, and file in the office of the county clerk, the notice of appeal and all petitions, plats, and papers in his possession pertaining to the petition for the creation of such new school district.

(4) The county clerk shall forthwith, upon receipt of such notice of appeal and other papers, give notice to all parties interested, by causing to be posted at least ten (10) days prior to the date of the next regular meeting of the board of county commissioners, in at least three (3) of the most public places in the proposed new district, and one (1) on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one (1) of the most public places in each of said old districts, notices to the effect that the board of county commissioners will, at its office in the courthouse, upon a certain date, specifying the same in such notices, which date shall be during the next regular session of the board, finally hear and determine said appeal and said petition for the creation of such new district. The boundaries of any district can be changed in the following manner, to wit:

(5) A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent of schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous, provided, however, that no territory within three (3) miles of an established school in such district shall be so transferred and provided further that the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property in the district from which territory is taken shall not be reduced to less than seventy-five thousand dollars ($75,000.00); provided, however, that this latter provision shall not apply in cases where the remaining taxable valuation of the district from which the territory is taken contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(6) The petition shall describe the territory which it is proposed to transfer or include, and shall also state the reason for desiring such change, and the number of children of school age, if any, residing in the territory to be transferred or included.

(7) The county superintendent shall file said petition in his office immediately on receipt thereof, and shall give notice to the parties interested by posting notices at least ten (10) days prior to the time appointed for considering said petition, one (1) of which shall be in a public place in the territory which is proposed to be transferred or included, and one (1) on the door of each schoolhouse in each district affected by the change, or if there be no schoolhouse in such district, then in some public place in such district or districts, and at the time stated in said notice for the consideration of such petition, which shall not be less than ten (10) days nor more than thirty (30) days after the date of filing such petition, he shall proceed to hear such petition, and if he deem it advisable and for the best interest of the territory proposed to be transferred or included, he shall grant such petition and make an order fixing the boundaries of the district so changed, which order shall be final, unless an appeal be taken to the board of county commissioners of the county wherein such districts are located within thirty (30) days thereafter, and upon hearing thereof the decision of said board shall be final.

(8) All the papers, documents, and records in the case shall be certified by the county superintendent to the county commissioners for their determination of the matter on appeal; provided, that lands lying contiguous to a district and not attached to any district shall be attached to an adjacent district by the county superintendent of his own motion, and provided further, that all districts shall consist of contiguous territory.

History: Ap. p. Sec. 1751, Pol. C. 1895; re-en. Sec. 840, Rev. C. 1907; amd. Sec. 1, Ch. 82, L. 1911; amd. Sec. 404, Ch. 76, L. 1913; amd. Sec. 8, Ch. 196, L. 1919; re-en. Sec. 1024, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1927; amd. Sec. 1, Ch. 175, L. 1933; amd. Sec. 1, Ch. 61, L. 1943; amd. Sec. 1, Ch. 232, L. 1955; amd. Sec. 1, Ch. 163, L. 1957.

Amendments

The 1955 amendment added the last proviso clause to subd. (5).

The 1957 amendment in subd. (1) added the proviso clauses.

Repealing Clauses

Section 2 of Ch. 232, Laws 1955 and Sec. 2 of Ch. 163, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 232, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

Section 3 of Ch. 163, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

75-1831. (1039.7) **Examination of school district books—accounting methods to be prescribed—reports.** It shall be the duty of the county auditor in all counties having an auditor, and the county treasurer in all counties not having an auditor, to prescribe the method of keeping the books in school districts of the third class not maintaining a high school in their respective counties, and to make an examination of the books of such third class school districts at least once every year, and whenever directed so to do by the board of county commissioners, or requested by the board of trustees of such school districts. It shall be the duty of the clerk of districts of the third class not maintaining a high school of each of the several counties of the state to deliver to the county auditor or treasurer, as in this act provided, between the fifteenth day of June and

the fifteenth day of July of each year, all books, vouchers, claims, and other papers pertaining to his office, and take a receipt therefor, and all such books, vouchers, claims and papers shall be examined by said auditor or treasurer and returned to the several clerks, not later than August fifteenth of each year.

Upon the completion of the examination provided for in this act, the auditor or treasurer, as the case may be, shall report the result of his examination by sending to the chairman of each board of trustees a written report of such examination and file a copy of each such report in the office of the county superintendent of schools.

History: En. Sec. 1, Ch. 34, L. 1923; amd. Sec. 1, Ch. 93, L. 1955.

Amendment

The 1955 amendment inserted the words "not maintaining a high school" both times it appears.

CHAPTER 19—CLERKS OF SCHOOL DISTRICTS—SCHOOL CENSUS

Section 75-1904. Checking census reports—maintaining files—census of handicapped.

75-1904. (1051.1) **Checking census reports—maintaining files—census of handicapped.** It shall be the duty of the county superintendent of schools upon receipt of the report as provided in section 75-1903 to carefully examine the same and check it for errors or duplications with other census reports filed by other clerks of school districts of his county. For the purpose of assisting him in checking duplication in such reports, he shall make an alphabetical card index, classified by families, showing the names of all children on the school census, which index shall be kept current according to the census reports turned in to him each year. If the name of the same person be found upon more than one report or if the report contains names which are fictitious or names which properly belong in some other school district, he shall strike out such fictitious names and all duplicate names from all lists except that of the district in which such person was residing in good faith on the first day of October. If the county superintendent should find upon any census list the names of any persons who he believes were not residents in good faith in such district as aforesaid or which he believes are fictitious, he shall notify the clerk of the particular school district and if said clerk shall not establish the correctness of the list within fifteen (15) days after such notification, such names shall be stricken from the list. At the time of taking the annual census the clerk shall use reasonable diligence to ascertain the names of all handicapped children in the district and such information concerning the same as is required by the state superintendent of public instruction.

History: En. Sec. 2, Ch. 118, L. 1927; amd. Sec. 1, Ch. 140, L. 1955.

Amendment

The 1955 amendment substituted the words "kept current according to the census reports turned in to him each year" for "prepared in duplicate and a copy thereof forwarded to the superintendent of public instruction as provided hereafter" in the second sentence and substituted "names of all handicapped children in the district and such information concerning the same as is required by the state superintendent of public instruction" for "number of blind and deaf mute persons residing in the district between the ages of five and twenty-one years with

the names and postoffice addresses of each" in the last sentence.

Repealing Clause

Section 2 of Ch. 140, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 140, Laws 1955 provided the act should be in effect from and after the first day of July, 1955.

CHAPTER 22—SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—CONSTITUTION, PIONEER AND ARBOR DAY

Section 75-2204. Legal holidays—school sessions, when suspended.

75-2204. (1062) **Legal holidays — school sessions, when suspended.** No school shall be in session on the following holidays: New Year's day, Memorial day (May 30th), Independence day (July 4th), Labor day (first Monday in September), Veterans' day (November 11th), Thanksgiving day, or Christmas day; provided, however, that in school districts where the school building must be used for election purposes, state and national election day shall be deemed a legal holiday under the provisions of this act. No school shall be dismissed on the following holidays, but appropriate exercises as a part of the day's program shall be held in each school when school is in session, on each of the said holidays, and where such holidays fall on Saturday or Sunday such exercises shall be conducted on the Friday preceding such holiday: Lincoln's Birthday (February 12th), Washington's Birthday (February 22d), Arbor day (second Tuesday of May), Flag day (June 14th), Columbus day (October 12th), Pioneer day (November 1st), and such other days as may hereafter be designated as legal holidays by the legislature or governor.

History: En. Sec. 1300, Ch. 76, L. 1913; amd. Sec. 2, Ch. 240, L. 1921; re-en. Sec. 1062, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1957.

Amendment

The 1957 amendment added "Veterans' day (November 11th)" to the list of holidays when school shall not be in session and deleted "Armistice day (November 11th)" from the list of holidays when school is in session.

Repealing Clause

Section 2 of Ch. 31, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 24—TEACHERS—POWERS AND DUTIES—ELECTION—DISMISSAL

Section 75-2401. Re-election of teachers—when automatic—acceptance.

75-2401. (1075) **Re-election of teachers—when automatic—acceptance.** After the election of any teacher or principal for the fourth consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be

granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

History: En. Sec. 801, Ch. 76, L. 1913; re-en. Sec. 1075, R. C. M. 1921; amd. Sec. 1, Ch. 87, L 1927; amd. Sec. 1, Ch. 166, L. 1949; amd. Sec. 1, Ch. 26, L. 1957.

Amendment

The 1957 amendment raised the number of years after which re-election is deemed automatic from three to four.

Repealing Clause

Section 2 of Ch. 26, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 26, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 20, 1957.

Tenure

A teacher's tenure is a substantial, valuable and beneficial right, which cannot be taken away except for good cause. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 214.

The number of hours a teacher may teach in a day is not a factor in determining her right to tenure. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 215.

Collateral References

Dismissal of public school teacher because of disloyalty. 27 ALR 2d 487.

Personal liability of public school principals or teachers for negligence. 32 ALR 2d 178.

75-2411. (1085) Dismissal—appeal.

Appeals to County School Superintendent

Writ of prohibition does not lie against the county superintendent of schools to prevent her from acting in an appeal taken to her by a teacher who had been denied re-employment by the school board since by this section appeals from such dismissals go to the county superintendent of schools. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209.

Rules

The rules, a violation of which gives the school board the right and power to discharge are the rules referred to in the teacher's contract, viz. "rules and regulations adopted by the Board of Trustees of the district, which are made a part hereof by reference." Hence a teacher could not be discharged for violations of rules of the superintendent of the high school, which rules were not part of the "rules and regulations adopted by the Board of Trustees of the District, which are made a part" of the teacher's contract. Hovland v. School District No. 52, — M —, 278 P. 2d 211, 212.

CHAPTER 27—TEACHERS' RETIREMENT SYSTEM

Section 75-2707. Benefits.

75-2707. Benefits.

(1) to (7). * * * [Subdivisions (1) to (7), same as parent volume.]

(8) (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid only the

amount contributed by the member to his annuity savings account after first deducting any unpaid annual membership fees of said member.

(b) Should a member die before retirement only the amount of the member's contributions to his annuity savings fund account after deducting any unpaid annual membership fees shall be paid to his estate or such person as he shall have nominated by written designation duly executed and filed with the retirement board.

(c) In lieu of benefits provided in (b) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.

If the beneficiary so electing be the surviving spouse of the deceased member, such beneficiary shall receive, in addition to the monthly annuity, provided the deceased member was actively engaged as a teacher in the state of Montana within one (1) year prior to his death, the sum of fifty dollars ($50.00) per month for each child from the pension accumulation fund for the support of the minor child or children of the deceased member until such child or children reach his or their eighteenth birthday, but such payments shall not exceed in any one (1) month the sum of one hundred dollars ($100.00).

(9). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 87, L. 1937; amd. Sec. 2, Ch. 137, L. 1945; amd. Sec. 4, Ch. 28, L. 1949; amd. Sec. 4, Ch. 216, L. 1953; amd. Sec. 1, Ch. 160, L. 1955.

Amendment

The 1955 amendment added the second paragraph to subd. (8)(c).

Repealing Clause

Section 2 of Ch. 160, Laws 1955 repealed all acts or parts of acts in conflict therewith.

75-2715. Limitation on membership of other systems.

Cross-Reference

Supplemental social security coverage for teachers, secs. 59-1109 to 59-1113.

CHAPTER 29—COMPULSORY SCHOOL ATTENDANCE—TRUANT OFFICERS

Section 75-2901. Compulsory attendance—excuses.
75-2902. Employment of children under sixteen.

75-2901. (1135) Compulsory attendance—excuses. All parents, guardians, and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, language, English grammar, geography, history and civics, physiology and hygiene, and arithmetic. Every parent, guardian, or other person, having charge of any child between the ages of eight (8) and sixteen (16) years, shall send such child to a public, private, or parochial school, in which the basic language taught is English, for the time that the school attended is in

session, provided, however, that children sixteen (16) years of age or over who have successfully completed the school work of the eighth grade, or whose wages are necessary to the support of the family of such child, may be employed during the time that the public schools are in session upon making the proof and securing the age and schooling certificate provided for in the following section. School attendance shall begin within the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city and other districts having such superintendent, or by the clerk of the board of trustees in districts not having such superintendent, or by the principal of the private or parochial school, upon satisfactory showing either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, to teach the branches named in this section; provided, that the county superintendent may excuse children from attendance upon such schools where, in his judgment the distance makes such attendance an undue hardship. In case the county superintendent, city superintendent, principal, or clerk refuses to excuse a child from attendance at school, an appeal may be taken from such decision to the district court of the county, upon giving a bond, within ten (10) days after such refusal, to the approval of said court, to pay all costs of the appeal; and the decision of the district court in the matter shall be final. Any parent, guardian or other person having the care or custody of a child between the ages of eight (8) and sixteen (16) years, who shall fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars ($5.00) nor more than twenty dollars ($20.00).

History: Ap. p. Sec. 1921, 5th Div. Comp. Stat. 1887; amd. Sec. 1920, Pol. C. 1895; amd. Sec. 1, Ch. 45, L. 1903; re-en. Sec. 965, Rev. C. 1907; amd. Sec. 1100, Ch. 76, L. 1913; amd. Sec. 1, Ch. 75, L. 1921; re-en. Sec. 1135, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1949; amd. Sec. 1, Ch. 53, L. 1955.

Amendment

The 1955 amendment substituted "sixteen (16) years" for "fourteen years" in the first proviso clause.

75-2902. (1136) **Employment of children under sixteen.** No child under sixteen (16) years of age shall be employed or be in the employment of any person, firm, company or corporation during the school term, and while the public schools are in session in the district in which such child lives, unless such child shall present to such persons, firm, company, or corporation an age and schooling certificate. Such certificate shall be issued by the city superintendent of schools or principal of schools, or by some person duly authorized by him, and in districts not having a city superintendent or principal, by the county superintendent of schools upon satisfactory proof that such child is of the age of sixteen (16) years or over, and has successfully completed the eighth grade as the same is designated and determined by the state board of education; provided, also, that in case the wages of any child over sixteen (16) years of age are necessary to the support of the family of such child, the city superintendent of schools, or principal of schools, or county superintendent, as the case

may be, may, upon production of satisfactory evidence that the wages of such child are necessary to the support of the family, issue a certificate permitting the employment of such child, even though the said child may not have completed said eighth grade work. The age and schooling certificate shall be formulated by the superintendent of public instruction, and blank certificates shall be furnished by the clerk of the board of trustees.

Every person, firm, company, or corporation employing any child under sixteen (16) years of age shall exact the age and schooling certificate, or the certificate permitting the employment of such child, prescribed in this section, and shall, upon the request of the truant officer or other authorized person by school trustees, permit him to examine such certificates. When, however, employment of such child ceases, the employer shall promptly return to the city superintendent of schools, or principal of schools, or county superintendent of schools of such district where said child resides, the age and schooling certificate or certificate permitting the employment of such child. Any person, firm, company, or corporation employing any child contrary to the provisions of this chapter shall be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each and every offense; provided, however, that nothing in this act shall be construed to interfere with the employment of a child during the time school is not actually in session.

History: En. Sec. 2, Ch. 45, L. 1903; re-en. Sec. 966, Rev. C. 1907; amd. Sec. 1101, Ch. 76, L. 1913; amd. Sec. 1, Ch. 43, L. 1919; amd. Sec. 2, Ch. 75, L. 1921; re-en. Sec. 1136, R. C. M. 1921; amd. Sec. 1, Ch. 53, L. 1955.

Amendment

The 1955 amendment substituted "sixteen (16)" for "fourteen" both times it appears in the second sentence of the first paragraph.

Repealing Clause

Section 2 of Ch. 53, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 33—SCHOOL BUSSES—REQUIREMENTS—DRIVERS' QUALIFICATIONS—CONSTRUCTION AND OPERATION

Section 75-3308. Authority for regulating design, construction and operation of school busses.
75-3310. Meeting school bus receiving or discharging children—duty to stop—meeting on highways with separate roadways—duty of school bus driver to stop at railroad crossings.

75-3308. Authority for regulating design, construction and operation of school busses. (1) That the state board of education, by and with the advice of the supervisor of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce regulations not inconsistent with the motor vehicle code and the minimum standards for school busses, adopted by the national commission on safety education to govern the design, construction and operation of all school busses used for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this state and such regulations shall by reference be made a part of any such contract with a school district.

(2) Every school district, its officers and employees, and every person

employed under contract by a school district shall be subject to such regulations.

(3) These regulations shall include provisions that no person shall drive or operate, or be employed or permitted to drive or operate, any school bus who has not received and filed with the county superintendent of schools a certificate from the board of trustees of the school district for which the school bus is to be driven or operated, certifying the following:

a. That he is at least nineteen (19) years of age.

b. That he is of good moral character.

c. That he is the holder of a chauffeur's license.

d. That he has filed with the board of trustees a satisfactory physical examination signed by a licensed physician in the state of Montana on a blank provided by the state board of education.

(4) The term "approved school bus" shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated and under contract for transportation of children to or from school.

(5) Every approved school bus used for the transportation of school children shall bear upon the front and rear thereon a plainly visible sign containing the words "school bus" in letters not less than eight (8) inches in height. When a school bus is being operated upon a highway for purposes other than actual transportation of children either to or from school or for school functions, all markings thereon indicating "school bus" shall be covered or concealed.

(6) The Montana state board of education is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school busses, consistent with the provisions of this act, but supplemental thereto; except that such standards and specifications may designate and permit the use of flashing warning lights on school busses for the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 1, Ch. 183, L. 1947; amd. Sec. 1, Ch. 172, L. 1955.

Amendment

The 1955 amendment divided this section into subdivisions and added subd. (3).

75-3310. Meeting school bus receiving or discharging children—duty to stop—meeting on highways with separate roadways—duty of school bus driver to stop at railroad crossings. The driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop on a highway outside the limits of an incorporated city or town, and is receiving or discharging school children, shall stop such vehicle not less than ten (10) feet from such school bus and keep said vehicle stationary until such children have entered such school bus or have alighted and reached

the side of the highway on which they live, and the school bus has resumed motion, or the driver has signalled traffic to proceed.

The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway, or when upon a controlled access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

The driver of any school bus carrying any school child, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet, but not less than fifteen (15) feet, from the nearest rail of such railroad and while so stopped shall open door and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

History: En. Sec. 1, Ch. 61, L. 1953; amd. Sec. 2, Ch. 172, L. 1955.

Amendment

The 1955 amendment deleted from the first paragraph the words "nearest adjacent" which appeared betwen the words "the" and "side" and added at the end of the first paragraph the words "on which they live, and the school bus has resumed motion, or the driver has signalled traffic to proceed" and added the second, third and fourth paragraphs.

Repealing Clause

Section 3 of Ch. 172, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

For other school bus regulations see secs. 32-2198, 32-2199.

CHAPTER 34—TRANSPORTATION OF PUPILS

Section 75-3403. School board may operate busses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement busses and two-way radios for school bus or busses.
75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district.
75-3412. Transportation matters in controversy—settlement—county transportation committees.

75-3403. School board may operate busses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement busses and two-way radios for school bus or busses. The board of trustees shall have the power to purchase, or rent and provide for the upkeep, care, operation, maintenance, insurance, for two-way radios and for school busses; or to contract and pay for the transportation of eligible pupils, such contracts to run for terms not to exceed five (5) years; and provided further, that each district owning a school bus or busses may levy a sufficient number of mills to create a reserve of not to exceed twelve and one-half per cent (12½%) per year of the original cost of the bus or busses for which the reserve is created; said fund to be

kept separate and apart from all other funds, and to be used only for the purchase of the bus or busses needed to replace the bus or busses and two-way radios for which said reserve was created, unless authorized by a majority of the votes cast by the qualified electors of the district at an election called for that purpose. Provided, however, that school district trustees may authorize as standard equipment, the installation of two-way radios in a school bus or busses operating in school districts where weather and road conditions may constitute a hazard to the safety of the school pupil passengers. The two-way radios may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county, with their permission and the permission of the federal communications commission wherein said school bus or busses operate, or any frequency assigned for such operation by the commission.

History: En. Sec. 3, Ch. 152, L. 1941; amd. Sec. 1, Ch. 163, L. 1951; amd. Sec. 1, Ch. 52, L. 1955; amd. Sec. 1, Ch. 202, L. 1957.

Amendments

The 1955 amendment increased the term of contract from three years to five years.

The 1957 amendment inserted the words "maintenance, insurance, for two-way radios and for" and the words "and two-way radios" and added the "provided, however" clause.

Repealing Clauses

Section 2 of Ch. 52, Laws 1955 and Sec. 2 of Ch. 202, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 52, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 26, 1955.

Section 3 of Ch. 202, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district. The board of trustees may pay to the parents or legally appointed guardian of each child, eligible to transportation under this act, board or rent or provide transportation for the child, the amount called for under the following schedule in lieu of furnishing bus transportation:

(a) to (g). * * * [Subdivisions (a) to (g), same as parent volume.]

(h) In isolated cases where due to isolation pupils must live away from home to attend school or due to excessive distances, impassable roads or special circumstances where parents cannot transport their children payments in accordance with the above schedule are inadequate and adherence to such schedule would subject the parents or guardians of a school child or the child himself to financial or physical hardship the schedule may be altered by the county transportation committee subject to written approval by the state superintendent of public instruction; provided, that, in no case shall the altered schedule allow more than thirty dollars ($30.00) per month for one child, twelve dollars ($12.00) per month for the second child, and six dollars ($6.00) per month for each child in addition to two (2) from the same family. A degree of isolation chart shall be provided school district trustees by the state superintendent of public instruction to serve as a guide in requesting increased transportation due to isolation.

The applicant for such alteration of the schedule shall submit a written statement in duplicate to the board of trustees of the district which is obligated to make payment for transportation or services in lieu thereof, and

to the county transportation committee through the county superintendent, stating the special facts and circumstances upon which he relies to justify the alteration. The county transportation committee shall act on the application regardless of the approval or disapproval by the board of trustees of the district wherein such application was initiated.

If such application be approved by the county transportation committee and alterations of the schedule will result in increased payments to be made by the state to the district, the application and pertinent data and the decision of the county transportation committee shall be submitted to the state superintendent of public instruction for final approval or disapproval.

(i) to (l). * * * [Subdivisions (i) to (l), same as parent volume.]

History: En. Sec. 7, Ch. 152, L. 1941; amd. Sec. 1, Ch. 189, L. 1943; amd. Sec. 1, Ch. 116, L. 1945; amd. Sec. 2, Ch. 200, L. 1949; amd. Sec. 5, Ch. 189, L. 1951; amd. Sec. 1, Ch. 191, L. 1955.

Amendment

The 1955 amendment in the second paragraph of subd. (h) substituted the sentence "The county transportation committee shall act on the application regardless of the approval or disapproval by the board of trustees of the district wherein such application was initiated" for one which read "The county transportation committee shall not act upon any such application unless it has been approved by the district board," and in the third paragraph changed the word "alteration" to "alterations."

Repealing Clause

Section 2 of Ch. 191, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 191, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

75-3412. Transportation matters in controversy—settlement—county transportation committees. All transportation matters in controversy shall be settled by the county transportation committee hereinafter defined. Provided, that, if the applicant for transportation feels that he has not met with justice in the decision of the county transportation committee, he may appeal to the state superintendent of public instruction, in which case the county superintendent shall send to the state superintendent of public instruction all data and evidence connected with the case.

(a) To facilitate and administer the policies relating to the transportation of school pupils, there are hereby created county transportation committees. Such committees shall be organized in each county and shall consist of the county superintendent of schools, the chairman of the board of county commissioners, or such other member of the board as he may designate, one representative chosen by each high school board of trustees, who shall be a member of the board, or the high school superintendent, and a trustee from the elementary districts in each high school district who shall be selected at a joint meeting of the elementary district boards within the high school district. In counties which do not have high school districts, the elementary district representatives shall be selected at a county-wide meeting of the boards of trustees of the elementary districts of the county in a number equal to those of the high school boards, excepting that in no case shall an elementary district member of the transportation committee be a member of a school board which is both a high school board and an elementary district board. Provided, however, that the county

transportation committee shall have not less than five members and that where there is only one high school board in the county that both the high school board and the elementary districts may select two representatives. The county superintendent of schools shall be chairman of this committee and a quorum shall consist of two-thirds (2/3) of the membership. It shall be the duty of the county transportation committee to approve bus routes and applications for increased transportation payments, and to act in all controversies resulting from transportation matters.

When the transportation interests of a district are affected by the actions and interest of the county transportation committee of another county, it shall be represented on the county transportation committee of both counties, but shall have a voice only in matters affecting its high school.

Any school district which objects to the particular bus route or transportation area to which it has been assigned may upon vote of its board of trustees signifying such objection, be assigned to an adjoining district or transportation area which maintains a public high school, provided that the board of trustees of the latter school is willing to have such district assigned to its area. In case of a continued disagreement, on the initiative of a petition signed by twenty per cent (20%) of the qualified electors of any district indicating dissatisfaction with the area to which it has been assigned the board of trustees shall place the matter of which area to belong to at the trustee election in April; provided, however, that if such pupils are not transported to the nearest high school, the state reimbursement shall be limited to the amount which would be paid if they were transported to the nearest high school, unless such attendance has been approved by the county transportation committee and the state department of public instruction. The state board of education through the state superintendent of public instruction shall formulate such rules and regulations as may be necessary for establishing high school transportation areas for determining residence of pupils, and for carrying out the purposes of this act; provided, however, that such regulations shall not prevent or deny to any parent the right to transport or arrange for transportation of his children at his own expense to the high school of any district willing to accept them. Any patron of a school district or portion of a school district dissatisfied with transportation matters in his county shall have the right of appeal to the county transportation committee and to the state superintendent of public instruction.

History: En. Sec. 12, Ch. 152, L. 1941; amd. Sec. 6, Ch. 189, L. 1951; amd. Sec. 1, Ch. 201, L. 1953; amd. Sec. 1, Ch. 105, L. 1955.

Amendment

The 1955 amendment reworded subd. (a). For this subdivision prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 105, Laws 1955 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 105, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

CHAPTER 36—UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS—STATE SUPPORT—SCHEDULE OF CONTRIBUTIONS

Section 75-3612. Foundation program.
75-3618. Distribution of money available to districts—formula for apportionment of county funds.

75-3612. Foundation program. The moneys coming into said state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt retirement, and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

Elementary Schools

(1) For each elementary school having eight (8) or fewer pupils and which, upon the request of the board of trustees of the district, is approved as an isolated school by the county budget board, the district shall receive three thousand two hundred dollars ($3,200.00), and if said school is not approved as an isolated school, then it shall receive seventeen hundred dollars ($1,700.00).

(2) Schools with an ANB in excess of eight (8) but less than eighteen (18) pupils, shall receive three thousand two hundred dollars ($3,200.00) plus one hundred dollars ($100.00) per pupil on the basis of average number belonging over eight (8).

(3) Schools having an ANB of eighteen (18), but less than forty-one (41), shall receive a maximum of forty-two hundred dollars ($4,200.00), plus four thousand dollars ($4,000.00) provided two (2) teachers are regularly employed as full time teachers in such school, plus fifty dollars ($50.00) for each ANB over eighteen (18); forty-two hundred dollars ($4,200.00) shall be the maximum for any one-teacher school, plus fifty dollars ($50.00) for an ANB over eighteen (18), not to exceed an ANB over twenty-five (25).

(4) Schools having an ANB in excess of forty (40) will be guaranteed funds only on the basis of the total pupils (ANB) in the district for elementary pupils as follows:

For a school having an ANB of more than forty (40), and employing a minimum of three (3) teachers, the maximum of two hundred ninety-eight dollars ($298.00) shall be decreased at the rate of forty-five cents ($0.45) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. Provided, however, that if only two (2) teachers are employed in a school with an ANB over forty (40) the maximum schedule shall be nine thousand three hundred dollars ($9,300.00), plus eighty dollars ($80.00) for each ANB over forty (40), not to exceed an ANB over fifty (50). For a school having an ANB of more than one hundred (100) pupils, the maximum of two hundred seventy-one dollars ($271.00) shall be decreased at the rate of twenty-seven cents ($0.27) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three

hundred (300) pupils, the maximum shall not exceed two hundred seventeen dollars ($217.00) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all the schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

High Schools

For a school having an average number belonging (ANB) of forty (40) or fewer pupils in a school, the guaranteed budget shall not exceed four hundred ninety-five dollars ($495.00) for each pupil. High schools hereafter created shall not receive state equalization aid unless they have been accredited by the state board of education.

For a secondary school having an ANB of more than forty (40) pupils, the maximum four hundred ninety-five dollars ($495.00) shall be decreased at the rate of two dollars and twenty cents ($2.20) for each additional pupil until the ANB shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of three hundred sixty-three dollars ($363.00) shall be decreased at the rate of fifty-five cents ($0.55) for each additional pupil until the number ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, a maximum of three hundred eight dollars ($308.00) shall be decreased at the rate of twenty-three cents ($0.23) for each additional pupil until the total number, ANB, shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of two hundred eighty-five dollars ($285.00) shall be decreased at the rate of seven cents ($0.07) for each additional pupil until the total number, ANB, shall have reached six hundred fifty (650) pupils. Schools having an ANB in excess of six hundred fifty (650) pupils shall receive two hundred sixty dollars and fifty cents ($260.50) per pupil, provided that the maximum per pupil for all pupils, ANB, shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount guaranteed for the foundation program, only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.

History: En. Sec. 3, Ch. 199, L. 1949; amd. Sec. 1, Ch. 244, L. 1953; amd. Sec. 1, Ch. 241, L. 1955; amd. Sec. 1, Ch. 251, L. 1957.

Compiler's Note

Section 2 of Ch. 251, Laws 1957 amended section 4 of H. B. 384. It read as follows:

"Section 4. It is hereby provided that none of the funds allocated, or any other funds allocated to the state public school equalization fund, shall be paid out to the school districts of the state in excess of the foundation program needs, as established by section 75-3612, Revised Codes of Montana, 1947, as amended, or in excess of the state equalization percentage established under the provisions of section 75-3619, Revised Codes of Montana, 1947."

Amendments

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

The 1957 amendment made numerous changes in this section. For section prior to amendment see 1955 amendment and parent volume.

Repealing Clause

Section 3 of Ch. 251, Laws 1957 repealed all acts and parts of acts in conflict therewith.

75-3618. Distribution of money available to districts—formula for apportionment of county funds. After the deduction of transportation reimbursements provided by law, the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools, shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such county levy and the five (5) mill tax for elementary schools provided for in section 10 [75-1723] hereof, when added to all other funds available to the respective districts from the permanent school fund, payments by the federal government for Indian tuition, and all payments by it or any of its agencies in lieu of taxes, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the county common school levy and the proceeds of the county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after the uniform district levy and county and state equalization aid have been received:

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total costs of the foundation program for all such districts.

2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the county levy) bears to the cost of the foundation program of each such district.

3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of county funds but shall be excluded from further consideration under this section.

4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

For the purpose of determining levies in a joint school district maintaining a high school, the total cost of the general fund and other budgets of such joint districts shall be divided in the ratio which the number of pupils in the joint district residing in the county bears to the total ANB of the joint district. Such resulting high school budgets shall be considered as separate budgets for high school purposes of the respective counties involved, receiving a part of the ten (10) mill levy, state equalization aid and additional moneys on either the high school district or the part of the joint school district involved as any other high school of the county.

For elementary budgets in a joint school district the total cost of the foundation program for such joint school district shall be divided in the ratio which the number of pupils in the joint district residing in the county bears to the total ANB of the joint district. Each part of such budget so divided shall be treated as a separate budget for such part of the joint district and one of the school districts of the county for the purpose of apportioning proceeds of the county levy. The resulting amount shall be used as the foundation financial program requirement of the joint district for the apportionment of the county levy. The balance of the budget over the foundation program, plus any deficiency in the state equalization payment on the foundation program, shall be an obligation of all parts of the joint school district and the levy for this amount shall be determined by dividing the amount required by the total taxable valuation of the entire joint school district.

5. No district school shall be deprived of its needful share of either county levy by reason of it being nonaccredited.

History: En. Sec. 17, Ch. 199, L. 1949; amd. Sec. 1, Ch. 182, L. 1951; amd. Sec. 1, Ch. 272, L. 1955.

Amendment

The 1955 amendment added subd. 5.

Repealing Clause

Section 2 of Ch. 272, Laws 1955 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 272, Laws 1955 provided this act should be in effect from and after its passage and approval. Approved March 15, 1955.

CHAPTER 38—EXTRA TAXATION FOR SCHOOL PURPOSES

75-3801. (1219) District school taxes—election.

Electors

The fact that some electors pay taxes only on personal property does not disqualify them from voting at the election for the names of such electors appear on the assessment roll the same as do those of the electors who pay taxes on real estate. Habel v. High School District "C" of Cascade County, — M —, 292 P 2d 349, 351.

CHAPTER 39—BONDS

Section 75-3913. Conduct of election—voting by absent electors.

75-3908. (1224.8) Petition and election required for bond issues, etc.

Petitions to Rescind Valid Bond Elections

There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the question already favorably voted upon and carried, especially where, as here, no fraud is either alleged or shown in the conduct of the election already held. Schmiedeskamp v. Board of Trustees of School District No. 24, — M —, 278 P 2d 584, 586.

75-3910. (1224.10) Meeting of board of trustees to consider petition, etc.

References

Cited or applied in Habel v. High School District "C" of Cascade County, — M —, 292 P 2d 349, 352.

75-3912. (1224.12) Who entitled to vote—list of electors and poll books.

Electors

The fact that some electors pay taxes only on personal property does not disqualify them from voting at the election

for the names of such electors appear on the assessment roll the same as do those of the electors who pay taxes on real estate. Habel v. High School District "C" of Cascade County, — M —, 292 P 2d 349, 351.

75-3913. (1224.13) **Conduct of election — voting by absent electors.** The bond election shall be conducted in the manner prescribed for the election of school trustees and return shall be made and canvassed in a similar manner. Any qualified elector entitled to vote at any school bond election who is absent from the county or who is physically incapacitated from attending the polling place at such election may vote thereat by complying with the provisions of Chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended [23-1301 to 23-1321], except that the application of an absentee or physically incapacitated person for ballot may be made at any time within fifteen (15) days next preceding such bond election.

The school district clerk whose duty it is to cause the ballots to be prepared for the bond election shall furnish the county clerk with a supply of ballots prior to the fifteenth day next preceding the election for the use of the county clerk in furnishing ballots to applicants for absent voters' ballots.

The county clerk shall deliver to the judges of election at the opening of the polls all absent voters' ballots that he shall have received up to that time from absent or physically incapacitated electors. The procedure set out in Chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended [23-1301 to 23-1321], shall apply to the voting by absent electors with respect to school bond elections.

History: En. Sec. 13, Ch. 147, L. 1927; amd. Sec. 1, Ch. 203, L. 1955.

Amendment

The 1955 amendment added all of this section immediately following the first sentence.

Repealing Clause

Section 2 of Ch. 203, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 41—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS

Section 75-4101. High schools defined.
75-4116. County bond issue for county and district high schools.

75-4101. (1262.1) **High schools defined.** A high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises some one or more of the grades of school work intermediate between the elementary schools and the institutions of higher education of the state of Montana, and which has its own administrative head and corps of teachers under the direct supervision either of a district superintendent and the board of trustees of a school district, or of a county high school principal and board of trustees of such county high school, as the case may be.

Types of public high schools are defined and designated as follows:

1. A junior high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of the seventh, eighth,

and ninth grades of the school system under the supervision of the district superintendent and board of trustees of the school district, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

2. A senior high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of the tenth, eleventh, and twelfth grades of the school system, under the supervision of the district superintendent and board of trustees of the school district, or of the county high school principal and county high school board, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

3. A six-year high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of grades seven through twelve inclusive of the school system under the supervision of the district superintendent and board of trustees of the school, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

4. A regular four-year high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of grades nine through twelve, inclusive, of the school system under the supervision of the district superintendent and board of trustees of the school, or of the county high school principal and county high school board, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.

History: En. Sec. 1, Ch. 148, L. 1931; amd. Sec. 1, Ch. 250, L. 1957.

Compiler's Note

Section 2 of Ch. 250, Laws 1957 read "It is hereby provided that nothing in this act shall be construed to change or amend the budgeting powers of school districts granted under any existing statutes."

Amendment

The 1957 amendment added all that portion of this section beginning with "Types of public high schools are defined and designated as follows: * * *"

Repealing Clause

Section 3 of Ch. 250, Laws 1957 read "That section 75-4102 of the Revised Codes of Montana, 1947, shall be and the same is hereby repealed and all acts and parts of acts in conflict with this act are hereby repealed."

75-4102. (1262.2) **Repealed.**

Repeal

This section (Sec. 2, Ch. 148, L. 1931), defining junior high school, was repealed by Sec. 3, Ch. 250, Laws 1957. For new provision see 75-4101.

75-4116. (1262.15) **County bond issue for county and district high schools.** In any county where a county high school and also one (1) or more accredited district high schools are maintained bonds of the county may likewise be issued in accordance with the provisions of this chapter and for any of the purposes aforesaid, the proceeds of such issue to be divided among the county high school and accredited district high school, or schools of the county. The question submitted to the electors of the county shall definitely state the amount which is to be allotted to the

county high school and the amount which is to be apportioned to or among the accredited district high school, or schools; and in all such cases the amount allotted to the county high school and the amount to be apportioned among the accredited district high school or schools shall be computed upon the basis of the taxable valuation of the county high school district, and of all the accredited district high school districts of the county during the year preceding the submission of the question of the bond issue; provided, that in counties which have not been divided into high school districts, the distribution shall be computed upon the basis of the taxable valuation of the common school district in which the county high school is located, and the taxable valuation of all the common school districts maintaining district high schools in the county during the year preceding the submission of the question of the bond issue provided, further, that moneys apportioned to any high school district or common school district under this act, exclusive of the county high school, shall not be expended until the purpose for such expenditure has been approved by a vote of the people of the district at an election conducted in the same manner as the election to vote on extra taxes for school purposes.

History: En. Sec. 15, Ch. 148, L. 1931; amd. Sec. 1, Ch. 233, L. 1955.

Amendment

The 1955 amendment substituted the words "taxable valuation of the county high school district, and of all the accredited district high school districts" for the words "average daily attendance in the county high school, and in all the accredited district high schools" and added the proviso clauses.

Repealing Clause

Section 2 of Ch. 233, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 233, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

CHAPTER 42—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION

Section 75-4231. General powers and duties of boards of trustees.

75-4231. (1262.83) **General powers and duties of boards of trustees.** The board of trustees of every county high school and of every school district maintaining a district high school shall have the power, and it shall be its duty:

1. * * * [Same as parent volume.]

2. (a) At its discretion as restricted by law to purchase, or otherwise acquire, real estate to be used as a site or sites for a high school, high school dormitories, high school gymnasiums, and other high school buildings, or for any proper high school purposes, and to sell and to dispose of the same; at its discretion as restricted by law to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, and other buildings necessary for the high school, and to sell, move and dispose of the same; at its discretion as restricted by law to lease or contract with the board of trustees of any school district, or with any person, for suitable buildings or quarters to be used for any high school purposes or as a high school dormitory or gymnasium, and for

such term not exceeding three (3) years as the board may deem for the best interests of the high school; at its discretion as restricted by law to purchase, or otherwise acquire, all necessary and appropriate equipment and supplies for the conduct, operation and administration of the high school, including high school dormitories and gymnasiums; at its discretion as restricted by law to make all contracts and to do all things necessary to carry out or execute all or any of the powers herein specified and conferred upon the board; provided, all boards of trustees of county high schools, or districts maintaining high schools, shall be prohibited from letting any contracts for building, furnishing, repairing or other work for the benefit of the school, or purchasing supplies for said school, where the amount involved is one thousand two hundred fifty dollars ($1,250.00) or more, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided further, that the board of trustees shall have the right to reject any or all bids; provided that these provisions shall not apply in case of extreme emergencies.

(b) But the board shall exercise no power whatsoever conferred upon it by this subdivision 2 whereby obligations are assumed or an indebtedness created in excess of the funds on hand, belonging to the high school, and not otherwise appropriated, or available to the board from the collection of taxes actually levied for the current year, or from the sale of bonds already authorized; and the power of the board to purchase, or otherwise acquire, or to sell, or dispose of, a site or sites for a high school, high school dormitories, high school gymnasiums, or other high school buildings, or for any proper high school purpose, or to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, or other buildings necessary for the high school or to sell, move or dispose of the same, shall be exercised only at the direction of a majority of the qualified electors of the county in the case of a county high school, or of the district in the case of a district high school, voting at an election to be called by the board, and otherwise noticed, conducted, canvassed and returned in the same manner as the annual election of school trustees in school districts of the first class.

(c) Provided, however, that where a site or sites for a high school, high school dormitories, high school gymnasiums or other high school buildings or for any other proper high school purposes is contiguous to a site upon which there exists a high school building erected and in use for high school purposes, the board may purchase or otherwise acquire such contiguous site or sites without calling for a vote of the qualified electors of the county, in the case of a county high school, or the district, in the case of a district high school, and upon the making of such a purchase of, or otherwise acquiring, such site or sites, the board may enter into a contract or obligation providing for the purchase of said site or sites by deferred payments and may incur indebtedness for the whole or any part of said purchase price and shall not be restricted in the terms of said contract or the amount of said purchase price except that the amount of the indebtedness incurred shall not exceed ten thousand dollars ($10,000.00) as

to principal and interest; provided further, however, that before making any such purchase the board shall duly pass a resolution declaring such lands to be purchased necessary for school purposes of said district, and provide for the purchase thereof; provided further, that notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution.

(d) If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for fifteen (15) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Said petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the purchase of the property as provided for in said resolution. The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final.

3 to 15. * * * [Subdivisions 3 to 15, same as parent volume.]

History: En. Sec. 83, Ch. 148, L. 1931; amd. Sec. 1, Ch. 207, L. 1939; amd. Sec. 2, Ch. 106, L. 1951; amd. Sec. 1, Ch. 43, L. 1955.

Amendment

The 1955 amendment in subd. 2 (a) raised the amount from $750.00 to $1,250.00.

References

Cited or applied in Habel v. High School District "C" of Cascade County, — M —, 292 P 2d 349, 351.

CHAPTER 46—HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings.
75-4602. Commission may divide county into high school districts.

75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings. In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request. Such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class or two (2) in districts of the third class.

(a) The additional members elected to the board of trustees of districts maintaining high schools shall be elected at a meeting of the trustees of all of the boards of trustees of the common school districts included within the boundaries of the high school district, which meeting shall be held on the fourth Saturday in April beginning with the year 1951. The members so elected shall hold office for a term of three (3) years and such meetings and elections shall be held every third year after the first meeting. The state superintendent of public instruction shall make all necessary rules and regulations for the conduct of said meeting and it shall be the duty of the county superintendent of schools to give written notice of the meeting by registered mail to each trustee not less than seven (7) days before such meeting. The additional trustees elected shall be elected from the trustees of the common school districts included within the high school district with the exception of the membership of the board of trustees of the school districts maintaining high schools.

(b) The additional members elected to the board of trustees of districts maintaining high schools, shall take office immediately after qualifying and shall participate on an equal basis with other members in all business transacted by the board of trustees pertaining to the high school maintained by said districts.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement or repair of buildings, furnishing and equipping the same and purchasing the necessary land therefor, for the use of any or all high schools in such high school district, and to accept funds from the United States, its instrumentalities or any of its agencies in aid of any one or more of such purposes. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor, such proceedings may also be commenced on petition of thirty per cent (30%) of the qualified electors of the high school district. Upon presentation of this petition to the high school district board of trustees, the latter shall, within sixty (60) days take steps to present the matter asked for in the petition to a vote of the people of the high school district.

History: En. Sec. 1, Ch. 275, L. 1947; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 67, L. 1957.

Amendment

The 1957 amendment deleted the words "and the board of the district in which the high school is located" which appeared near the end of the first sentence between the words "district" and "so."

Repealing Clause

Section 2 of Ch. 67, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 67, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

References

Cited or applied in Habel v. High School District "C" of Cascade County, — M —, 292 P 2d 349, 351.

75-4602. Commission may divide county into high school districts. In all counties having a high school, or high schools, a commission consisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county, divide the entire county into and establish one (1) or more high school districts for the purpose of this act, after hearing; provided, that each high school district so formed must have one (1) or more operating, accredited high schools within its boundaries; provided, further, that both parts of a joint district maintaining a high school may be considered as maintaining an operating high school, and as such each part of the joint district may, together with one (1) or more adjacent common school districts whose pupils attend the high school in the joint district, be set aside as a high school district. Provided, that, such resulting high school district in the county where the joint district high school is not located, shall be responsible for its share of the joint district high school budgets as is arrived at by following the procedure outlined in section 17, chapter 199, Laws of 1949 [75-3618], and shall also be considered as a single high school district with the high school district of the joint district, wherein the high school is located for purposes of bonding as provided in sections 75-4601—4605, R. C. M., 1947, as amended by chapter 188, Laws of 1951, and also for purposes of selecting additional trustees as provided for in section 75-4601, R. C. M., 1947, as amended by chapter 188, Laws of 1951. That the commission shall fix the time, date and place, and at such time, date and place hold a public hearing of the requested division of the county into high school districts, at which hearing any interested person may appear and be heard concerning the requested division. Written notice of such hearing shall be mailed by the county superintendent of schools to the chairman of each and every board of trustees of each and every school district in the county, and the chairman of the board of trustees of the county high school, stating the time, date and place of such public hearing, and shall be mailed not less than two (2) weeks preceding the date fixed for such hearing. The certificate of the county superintendent of schools filed with the commission reciting that said notices were mailed shall be conclusive.

The boundaries established by said commission shall be subject to the approval of the superintendent of public instruction.

If any high school district shall cease to have within its borders an operating, accredited high school, then it shall be the duty of the county superintendent of schools to consolidate and annex the common school districts comprising said high school district to one or more operating high school districts within a period of six (6) months after one (1) year of being declared non-operating or non-accredited; provided, that before

said county superintendent of schools may declare such a consolidation and annexation, he shall give the board of trustees of each of the common school districts within said high school district proposed to be consolidated and annexed twenty (20) days' notice of his intention so to do.

In creating such districts the commission shall give primary consideration to the factor of convenience of the patrons of the several schools. Common school districts may be grouped for the purpose of this act and when practicable high school districts shall be made up of contiguous and adjacent common school districts but the commission must take into consideration the existence or non-existence of obstacles of travel, such as mountains and rivers and existence or non-existence of highways and distances to high school. No common school districts shall be divided for the purpose of this act but must be made a part of a high school district in its entirety, unless such division is approved and authorized by the voters of the common school district involved, at a special election held for that purpose and such division shall be on the basis of equal area, or as near thereto as practicable in relation to the geographical features of such district, provided that the entire portion of a joint school district within the county shall be included within a high school district, provided further that in the event twenty per cent (20%) of the voters of a common school district be dissatisfied with the proposed action of said commission in dividing into and establishing high school districts, or in the proposed action of the county superintendent in consolidating and annexing a common school district theretofore constituting a part of a high school district to an existing high school district, and shall within thirty (30) days after the giving of the notice heretofore required, file their written protest with said county superintendent, then said common school district or districts shall be by said county superintendent, or by said commission as the case may be, directed to hold a special election for the purpose of determining which high school district said district shall be annexed to or into which high school district said district shall be divided as hereinbefore provided, and the said superintendent or commission, as the case may be, shall be governed by the result of said election.

History: En. Sec. 2, Ch. 275, L. 1947; amd. Sec. 2, Ch. 188, L. 1951; amd. Sec. 1, Ch. 237, L. 1953; amd. Sec. 1, Ch. 236, L. 1955.

Amendment

The 1955 amendment added the proviso clause in third paragraph; substituted the word "primary" for "first" in the first sentence of the fourth paragraph and added the proviso clause.

Repealing Clause

Section 2 of Ch. 236, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 236, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

CHAPTER 50—EDUCATION CLASSES FOR MENTALLY AND PHYSICALLY HANDICAPPED CHILDREN

Section 75-5001. Special education—mentally handicapped children—physically handicapped children.
75-5002. Courses of instruction—preparation—cooperation.
75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation.

75-5004. Mentally handicapped children not to be deprived of school privileges without consent of state superintendent—notifying local welfare department and state training school of those excluded.
75-5005. Petition of parents for establishment of special teaching program.
75-5006. Qualifications of teachers—medical, psychiatric, and psychological services—promotion, direction and supervision of special education—supervisor—agency for cooperation with other agencies—courses of study, size of classes, distances to be traveled.
75-5007. Supervisor—powers and duties.

75-5001. Special education—mentally handicapped children—physically handicapped children. Within the meaning of this act special education is that type of education requiring special facilities or instruction because of physical or mental deviation from the average on the part of some children. These handicapped are defined as follows:

(1) Mentally handicapped children are children who are not capable of profiting from the general educational program of the public schools. These children may be considered in three groups as follows: (a) Educable mentally handicapped. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seven-year-old. (b) Trainable mentally handicapped. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old and who, for entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands. (c) Custodial mentally handicapped. Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication. The public schools are to assume responsibility for only the educable handicapped groups.

(2) Physically handicapped children are those children who are capable of profiting from the general education program of the public schools, but who need special equipment, special services, and transportation to compensate for such physical handicaps as cardiac, cerebral palsy, or other physical handicaps including inadequate hearing and vision, which makes them unable to profit from the normal education processes without some special provision. Nothing herein shall be construed to interfere with the purpose and function of the School for the Deaf and Blind in Great Falls.

History: En. Sec. 1, Ch. 206, L. 1955.

Title of Act

An act to provide for special education classes in our public schools for the mentally and physically handicapped children, defining handicapped children, providing for courses of instruction, utilization of specialists, providing for local boards of trustees to furnish special education and transportation for the handicapped, and to exclude certain handicapped pupils, providing for reimbursements for special education classes, providing for the exclusion of certain mentally handicapped, making provision for parents to petition for special education, defining the duties of the state superintendent, the qualifications of special teachers, services of the state board of health and the state board of education, providing for a supervisor of special education and defining his duties, providing for the coordination of all agencies working in the field of special education for the handicapped child, and repealing all acts and parts of acts in conflict herewith and providing for the effective date of this act.

75-5002. Courses of instruction—preparation—cooperation. The state superintendent of public instruction, with assistance from the state board

of health, and superintendent of the state training school, and with the approval of the state board of education, shall prepare courses of instruction in the discovery and education of the handicapped child.

The state superintendent of public instruction shall cooperate with the state board of health in the utilization of the board of health specialists in hearing, speech and physical defects, both on the state and local levels, and shall also utilize the Montana mental hygiene clinic and specialists at the state training school in determining the type of special instruction needed by mentally deficient children.

History: En. Sec. 2, Ch. 206, L. 1955.

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation. The board of trustees in each school district may maintain special classes for educable mentally handicapped children or for physically handicapped children, or may arrange to use the services of such approved crippled children's classes as may exist within the state, or may provide transportation services from home to school and return for physically handicapped children of such ages as it deems wise; provided, that the local board has the right to exclude persons of low intelligence or severe delinquent behavior. The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees but shall be the responsibility of the state superintendent of public instruction in cooperation with appropriate medical, psychiatric and psychological advice listed above. Two (2) or more districts may combine to provide such educational facilities.

Reimbursements on the part of the state for such programs shall be computed on the basis of counting each such mentally handicapped child in such special classes as two (2) in average number belonging, and each physically handicapped child according to a schedule to be prepared by the state superintendent of public instruction, but in no case shall it be over three (3) average number belonging for each such child, prorated according to time and number in these special classes, or in home tutoring. Transportation reimbursements shall be made on a schedule arrived at by the state superintendent of public instruction, and such expenditures shall be added to the transportation budget of the district. The state shall reimburse two-thirds of such approved transportation.

Children sent to the crippled children classes in any other approved program within the state shall be counted on the rolls of the home district and the home district shall transfer the funds for each such child to the school district in which these classes are located according to prescribed schedules provided, however, that when children are sent to an institution supported by funds of the state of Montana the home district will not be required to transfer funds for such child.

History: En. Sec. 3, Ch. 206, L. 1955.

75-5004. Mentally handicapped children not to be deprived of school privileges without consent of state superintendent—notifying local welfare department and state training school of those excluded. No mentally

handicapped child shall be deprived of school privileges except with the express approval of the state superintendent of public instruction, upon appropriate medical, psychiatric, or psychological advice. Each child so excluded shall be brought immediately to the attention of the local welfare department and of the proper authorities of the state training school who shall be charged with responsibility for providing adequate protection and care, in keeping with available facilities, so far as the parents are willing to accept such services.

History: En. Sec. 4, Ch. 206, L. 1955.

75-5005. Petition of parents for establishment of special teaching program. The parents or guardians of seven (7) or more mentally handicapped children of one (1) type, living in one (1) town or in neighboring towns, which children can be taught together, may petition the district board or boards of trustees for the establishment of a special teaching program. The district board or boards of trustees shall request the state board of education for such advice and assistance as the state board of education considers appropriate in the organization of such a program.

History: En. Sec. 5, Ch. 206, L. 1955.

75-5006. Qualifications of teachers—medical, psychiatric, and psychological services—promotion, direction and supervision of special education—supervisor—agency for cooperation with other agencies—courses of study, size of classes, distances to be traveled. The state superintendent of public instruction, with approval of the state board of education, shall establish by regulation the qualifications of persons appointed to teach mentally handicapped children. The state board of health shall provide qualified medical, psychiatric, and psychological services as needed to assist the state superintendent of public instruction in making diagnoses, recommending care, or passing upon the eligibility of children for admission to or discharge from special programs for mentally handicapped children.

The state superintendent of public instruction, with the assistance of the state board of health, and with approval of the state board of education, shall make provision for the proper promotion, direction and supervision of special education for mentally and physically handicapped children and shall provide necessary and adequate supervision and consultation for the purpose of carrying out this act and shall appoint a supervisor and specify his qualifications. The state superintendent of public instruction shall be the agency for cooperation and consultation with federal agencies, other agencies and private bodies on matters of public school education of mentally and physically handicapped children, reserving to other agencies their full responsibilities for other aspects of the care of such children. Courses of study, size of classes, adequacy of methods of instruction, the distances to be traveled to each school or class and the necessary equipment and special services for mentally and physically handicapped children shall comply with the requirements prescribed by the state board of education, which shall also have authority to make any other needful regulations to carry out the purposes of this act.

History: En. Sec. 6, Ch. 206, L. 1955.

75-5007. Supervisor—powers and duties. The duties of the supervisor, under direction of the state superintendent of public instruction, with assistance from the state board of health and superintendent of the state training school shall be to discover the child needing special education throughout the state by observation, examination, and by intelligence, emotional and achievement tests, and such other methods as are deemed necessary and expedient by him, and to administer an educational program for the exceptional child and to supervise subjects and methods and equipment to be used in the classrooms and schools insofar as they affect the handicapped child, and provided, however, that the provisions of this act shall not be mandatory upon any school or school district.

For the purpose of properly educating and caring for such children, the supervisor shall see that the courses of instruction mentioned above shall be made available for all teachers in training and in service. He may recommend ungraded classrooms in schools, home study, special facilities or transportation. He may hold conferences, cooperate, consult, advise and investigate with school superintendents, principals, school facilities, individual teachers, parents, school boards, and other interested groups and persons. He may suggest physical or mental examinations and perform other duties within the limits of this act not specified but directed by the state superintendent of public instruction on approval of the state board of education.

History: En. Sec. 7, Ch. 206, L. 1955.

Repealing Clause

Section 8 of Ch. 206, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 206, Laws 1955 provided the act should be in effect from and after July 1, 1956.

CHAPTER 51—FEDERAL AID

Section 75-5101. Federal funds—authority to accept.
75-5102. Federal aid to education fund—expenditures.

75-5101. Federal funds—authority to accept. The governor of the state of Montana and the superintendent of public instruction of the state of Montana are hereby authorized on behalf of the state of Montana to request and accept such funds as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Said moneys shall be deposited by the governor and superintendent of public instruction in a special fund hereinafter created with the treasurer of the state of Montana.

History: En. Sec. 1, Ch. 173, L. 1957.

Title of Act

An act authorizing the governor of the state of Montana and the superintendent of public instruction to request and receive federal funds for public school building construction and/or for any other public school purposes; authorizing the use and expenditure of such federal funds by the superintendent of public instruction of the state of Montana; and providing for deposits and appropriations without lapse; designating said funds as the "Federal Aid to Education Fund"; providing for a repealing clause; and providing for an effective date of this act.

75-5102. Federal aid to education fund—expenditures. There is hereby created in the treasury of the state of Montana a special fund to be known as the "Federal Aid to Education Fund." All moneys deposited into this fund are hereby appropriated and made available to the state superintendent of public instruction of the state of Montana. All moneys in the fund shall be expended for the purpose of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such expenditures shall be made under the supervision and discretion of said superintendent of public instruction. Any balance in this fund shall not lapse at any time, but shall be continuously available to the state superintendent of public instruction for the expenditure consistent with this act and acts of the federal government.

History: En. Sec. 2, Ch. 173, L. 1957.

Repealing Clause

Section 3 of Ch. 173, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 173 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

REVISED CODES OF MONTANA

VOLUME 5

1957 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 5 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5 THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 5

For index see pocket supplement to Volume 9

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CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section 77-909. War orphans' attendance to be without fees.
77-910. Board of education to determine eligibility.
77-911. Supervision of attendance and charges.

77-905 to 77-908. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 201, L. 1955), relating to war orphans' educational fund concerning purpose, eligibility, attendance and amount of payment, was repealed by Sec. 4, Ch. 141, Laws 1957.

77-909. War orphans' attendance to be without fees. There shall be established under this act the authority of the state board of education to waive, the charges for the matriculation, tuition, any and all educational fees, for such children of members of the armed forces of the United States who served on active duty during World War II and/or the Korean conflict and who, at the time of entry into such service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States, as are now attending or may hereafter attend any of the units of the greater university of Montana, provided any such child shall enter such institution prior to attaining the age of twenty-one (21) years.

History: En. Sec. 1, Ch. 141, L. 1957.

Title of Act

An act to provide educational opportunities in the units of the greater university of Montana for the children of members of the armed forces of the United States killed while in the armed services of the United States or dying as a result of a disability or disease incurred while in said services during World War II and/or the Korean conflict; repealing Chapter 201, Laws of 1955; providing for the waiver of fees; repealing all acts and parts of acts in conflict herewith.

77-910. Board of education to determine eligibility. The state board of education shall determine the eligibility of any such child who shall make application for the benefits provided for in this act, and a finding by the United States veterans' administration that any such member was killed in action or died as the result of injury or other disability incurred in action shall be binding upon said board, but in the absence of such finding said board of education shall determine the facts.

History: En. Sec. 2, Ch. 141, L. 1957.

77-911. **Supervision of attendance and charges.** The state board of education shall satisfy itself of the attendance of any such child at any such institution.

History: En. Sec. 3, Ch. 141, L. 1957.

Repealing Clause

Section 4 of Ch. 141, Laws 1957 repealed chapter 201 of the Laws of 1955, and all acts and parts of acts in conflict therewith.

TITLE 78—STATE CAPITOL

Chapter 7. State capitol repair and reconstruction, 78-728 to 78-736.

CHAPTER 7—STATE CAPITOL REPAIR AND RECONSTRUCTION

Section 78-728. 1957 bond issue authorized.
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78-731. Amount of bonds authorized.
78-732. Interest—term—provisions.
78-733. Sale of bonds—registration of bonds.
78-734. Principal and interest—payment.
78-735. State capitol building repair, interest and sinking fund.
78-736. Budget act inapplicable.

78-728. 1957 bond issue authorized. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of repairing the state capitol building at Helena, Montana.

History: En. Sec. 1, Ch. 248, L. 1957.

Title of Act

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of repairing the state capitol building; designating the funds from which said bonds shall be paid; providing for a state capitol building repair, interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act.

78-729. Architect and/or engineer—employment. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect and/or engineer to complete plans; and to proceed with the repair of the state capitol building without delay, as soon as proceeds from the bonds are available.

History: En. Sec. 2, Ch. 248, L. 1957.

78-730. Bids—contractor's bond. The state board of examiners shall call for bids for the repair of said building and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in the amount of one hundred per cent (100%) of the contract price, conditioned for the faithful performance of their duties and contracts.

History: En. Sec. 3, Ch. 248, L. 1957.

78-731. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purposes herein expressed, shall not exceed the sum of one million dollars ($1,000,000.00).

History: En. Sec. 4, Ch. 248, L. 1957.

78-732. Interest—term—provisions. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at a rate not exceeding four per cent (4%) per annum, payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable at any time after the

date of issue, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 248, L. 1957.

78-733. Sale of bonds—registration of bonds. Said bonds shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 248, L. 1957.

78-734. Principal and interest—payment. The principal and interest of the bonds authorized by this act shall be payable out of the following fund and from it only: All the income received from the capitol building land grant, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act. Any and all balances or sums now in said capitol building land grant fund or that may accrue to and become a part of said fund prior to the time of the sale of the bonds provided for herein, shall likewise be, and the same are hereby pledged and appropriated for the payment of principal and interest of the bonds authorized by this act, and to cover and pay the cost of repairing of said building to the extent said balances or accruals to said fund may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided, only for the total sum or amount necessary to be raised in excess of such total of all balances or sums now in, or that may be accrued to, said capitol building land grant fund, in order to make available for such repair of said building a total of one million dollars ($1,000,000.00).

History: En. Sec. 7, Ch. 248, L. 1957.

78-735. State capitol building repair, interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the state capitol building repair, interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the repair of said building.

History: En. Sec. 8, Ch. 248, L. 1957.

78-736. Budget act inapplicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 9, Ch. 248, L. 1957.

Separability Clause

Section 10 of Ch. 248, Laws 1957 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

Effective Date

Section 11 of Ch. 248, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

TITLE 79—STATE FINANCE

Chapter 12. Montana trust and legacy fund—unified investment plan, 79-1202.
20. Bond validating act, 79-2001 to 79-2003.

CHAPTER 12—MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

Section 79-1202. Funds to be invested according to unified plan.

79-1202. (5668.20) **Funds to be invested according to unified plan.** 1. The state board of land commissioners is hereby authorized and required to invest as part of the Montana trust and legacy fund the following: The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions of learning, subject to investment; the escheated estates funds, meaning all of the various sums paid over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfully constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long term investment not legally in the custody of any lawfully constituted board or the investment of which has not been designated by statute. Moneys in the Montana trust [fund] and legacy fund shall be invested subject to the provisions, regulations and limitations of sections 81-1001 to 81-1008, inclusive.

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: That part of the Montana highway patrolmen's retirement fund in excess of twenty-five thousand dollars ($25,000.00); the public employees' retirement fund; the industrial accident reserve fund; all funds subject to investment as designated by the teachers' retirement board; that part of the fish and game fund designated as available by the Montana fish and game commission and all other funds designated by statute. Moneys in the long term investment fund may be invested as follows:

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government.

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks;

in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; the purchase of all such investments to be subject to the discretion of the board.

(c) In debentures issued by the federal housing administrator, and in obligations of national mortgage associations.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of fifty per centum (50%) or more of the loan made in the event of default by the United State government or an agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, provided, however, no more than fifty per centum (50%) of the funds in one (1) account shall be invested in such mortgages. All securities purchased and all cash on hand for each fund shall be kept separate in the long term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in any state bond sinking and interest fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any educational bond interest and sinking fund; any of the Montana highway patrolmen's retirement fund less than twenty-five thousand dollars ($25,000.00) as directed by the Montana highway patrolmen's retirement board and any other fund designated by statute to be so invested or any fund in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which fund is requested by the officer, or officers or governing body and which fund is subject to investment. The funds in the short term investment fund may be invested as follows:

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury obligations shall be credited to the general fund of the state of Montana.

(b) Any sinking and interest fund and any other funds may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, and in interest-bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys in any sinking and interest fund shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for payment of principal and interest of the obligations for which the sinking and interest fund was created.

All securities purchased and all cash on hand for each fund shall be kept separate in the short term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field and there shall not be paid for such services an amount in excess of one thousand dollars ($1,000.00) in any one fiscal year.

History: En. Sec. 2, Ch. 70, L. 1929; amd. Sec. 8, Ch. 176, L. 1953; amd. Sec. 1, Ch. 118, L. 1957.

Compiler's Note

The bracketed word "fund" in subd. 1 was enclosed in brackets by the compiler to denote said word should be omitted.

Amendment

The 1957 amendment in subd. 2(d) raised the per cent of funds in one account that can be invested in mortgages from 40% to 50%.

Repealing Clause

Section 2 of Ch. 118, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 20—BOND VALIDATING ACT

Section 79-2001. Short title of act.
79-2002. Definitions.
79-2003. Validation of bonds heretofore issued.

79-2001. Short title of act. This act may be cited as "The 1957 Bond Validating Act."

History: En. Sec. 1, Ch. 4, L. 1957.

Compiler's Note

Chapter 4 of Laws 1957 is substituted for Ch. 5, Laws 1955 appearing in the parent volume and is given the same section numbers, it being almost identical therewith.

Title of Act

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described; and providing that this act may be cited as "the 1957 bond validating act."

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History: En. Sec. 2, Ch. 4, L. 1957.

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued for any of the purposes for which bonds may be issued by any public body of this state and all proceedings heretofore taken for the authorization and issuance of bonds by such public body, and the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such public body.

History: En. Sec. 3, Ch. 4, L. 1957.

Repealing Clause

Section 4 of Ch. 4, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 4, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 7, 1957.

TITLE 80—STATE INSTITUTIONS

Chapter 1. Montana state school for the deaf and blind, 80-108.
7. The state prison, 80-705.

CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section 80-108. Admission of nonresident children and advance payment of cost—Indian children.

80-108. Admission of nonresident children and advance payment of cost—Indian children. Deaf and blind children, who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state; provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state. Indian children who are wards of the United States and Montana residents shall be eligible to, and shall be admitted to such school on the same terms as residents. The school for the deaf and blind is hereby authorized to collect reimbursement from the United States government for expenses incurred in providing services for Indian children who are wards of the United States government.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957.

Amendment

The 1957 amendment inserted the words "and Montana residents" in the second sentence and substituted a period and the third sentence for a former proviso clause of the second sentence which read "provided, however, that the school for the deaf and blind children shall make claim to and be entitled to receive reimbursement from the United States government for the care of such Indian children who are wards on the same basis and at the same rate as charges are made to nonresidents admitted to said school."

Repealing Clause

Section 2 of Ch. 182, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—THE STATE PRISON

Section 80-705. Warden—appointment, salary and removal.

80-705. (12438) **Warden—appointment, salary and removal.** A warden of the state prison shall be appointed by the governor, and such appointment must be transmitted to and approved by the senate. The tenure of office of the appointee shall be for a period of four (4) years from the date of appointment and until his successor has been appointed and qualified. The salary of the warden is hereby fixed at the sum of seven thousand five hundred dollars ($7,500.00) per year, payable in monthly installments of six hundred twenty-five dollars ($625.00) each, at the end of each and every month. The warden shall be subject to removal by the

state board of prison commissioners at any time for misfeasance, nonfeasance, or malfeasance in office, but before he is so removed formal charges in writing must be preferred and the warden given opportunity to appear and defend himself against any such charges. When charges shall have been preferred, asking the removal of the warden, notice of the time and place of hearing of said charges shall be served upon him at least five (5) days prior to the day set for the hearing; provided, however, that when such charges have been preferred, the state board of prison commissioners shall have the power and authority to suspend the warden until after the determination of the charges preferred against him.

History: En. Sec. 2954, Pen. C. 1895; re-en. Sec. 9720, Rev. C. 1907; amd. Sec. 1, Ch. 11, L. 1913; re-en. Sec. 12438, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1957.

Amendment

The 1957 amendment raised the salary of the warden from $4,000 to $7,500 per year and the monthly installment payment from $333.33 to $625.

Repealing Clause

Section 2 of Ch. 61, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 61, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

TITLE 81—STATE LANDS

Chapter 14. State forests—forester—timber sales—fire wardens, 81-1403.
17. Oil and gas on state lands—disposal of, 81-1709.

CHAPTER 14—STATE FORESTS—FORESTER—TIMBER SALES —FIRE WARDENS

Section 81-1403. State forester—appointment—compensation—term—assistants—bond.

81-1403. (1830.3) **State forester—appointment—compensation—term —assistants—bond.** The governor, by and with the advice and consent of the senate, shall appoint a state forester to have general charge of all the state's forests. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall not exceed seven thousand dollars ($7,000.00) per annum, at the discretion of the state land board, together with the actual, necessary expenses while engaged in outside work in connection with his office and its duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be for four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, fire wardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law. He shall give a satisfactory bond to the state of Montana in the sum of ten thousand dollars ($10,000.00) as a guarantee for the faithful performance of his duties.

History: En. Sec. 3, Ch. 179, L. 1925; amd. Sec. 1, Ch. 161, L. 1949; amd. Sec. 1, Ch. 192, L. 1953; amd. Sec. 1, Ch. 28, L. 1955; amd. Sec. 1, Ch. 94, L. 1957.

Amendment

The 1957 amendment raised the salary of the state forester from $6,000 to $7,000 per annum.

Repealing Clause

Section 2 of Ch. 94, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF

Section 81-1709. Bond of lessees.

81-1709. (1882.9) **Bond of lessees.** The state board of land commissioners shall require lessees of oil and gas leases and assigns thereof to furnish bonds to the state in form and substance prescribed by law or by regulations of the board and in amount, or amounts, adequate to indemnify the state against loss, damage or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease or as-

signment thereof, including the payment of any money penalties fixed by the board; provided, that no bond in excess of twenty thousand dollars ($20,000.00) shall be required under any one lease for any one year; and provided further that any lessee of oil and gas leases or any assignee of such leases, may, at his discretion, furnish one bond in a sum to be fixed by the board not to exceed fifty thousand dollars ($50,000.00) covering all leases in which any interest is acquired, in which event separate bonds relating to individual leases or interests therein shall not be required.

History: En. Sec. 9, Ch. 108, L. 1927; amd. Sec. 1, Ch. 186, L. 1957.

Amendment

The 1957 amendment added the "and provided further clause."

Repealing Clause

Section 2 of Ch. 186, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 186, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

Chapter 11. Examiners, state board of—state printing contract and supplies, 82-1109.
15. Hail insurance, state board of, 82-1507.
31. State agency for surplus property, 82-3102, 82-3105, 82-3106.

CHAPTER 11—EXAMINERS, STATE BOARD OF—STATE PRINTING CONTRACT AND SUPPLIES

Section 82-1109. Claims for which appropriations have been made.

82-1109. (238) **Claims for which appropriations have been made.** Any person having a claim against the state, for which an appropriation has been made, may present the same to the state board of examiners in the form of an account or petition, and the secretary of the board must date, number, and file such claim, provided, however, that all claims for which appropriations have been made must be transmitted to the said board not later than twenty (20) days after the close of each fiscal year, and claims submitted more than twenty (20) days after the close of each fiscal year and not paid as provided by subsection 3 of section 59-701, Revised Codes of Montana, 1947, by reason of exhausted appropriation shall be transmitted to the next succeeding legislative assembly in the same manner as provided in section 82-1119, Revised Codes of Montana, 1947. The said board must allow or reject claims submitted not later than twenty (20) days after the close of each fiscal year in the order of their presentation.

All claims against the state shall contain the following statement: "I certify that this claim is correct and just in all respects, and that payment or credit has not been received." Claims need not be verified by affidavit.

History: Sec. 232, Rev. C. 1907; re-en. Sec. 238, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1953; amd. Sec. 1, Ch. 110, L. 1955; amd. Sec. 1, Ch. 21, L. 1957. See also history of Sec. 82-1101.

Amendment

The 1957 amendment added the second paragraph.

CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section 82-1507. Scope and object of levy—reserve fund.

82-1507. (352) **Scope and object of levy—reserve fund.** (1) In making the levy provided in the preceding section the state board of hail insurance shall provide for:

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve fund.

3. For the maintenance of the reserve fund, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants and losses as the same shall be settled and adjusted by the said board including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

4. If at the end of any hail insurance season the state board of hail insurance determines and finds that more funds are accumulating from

the current year's levies than were estimated when the levy was made, and which funds are in excess of the need for the payment of losses and expenses and maintenance of the reserve fund, the state board of hail insurance may, at its discretion, refund to the farmers insured for the said year, on a pro rata or percentage basis the excess of the said fund. A list containing the names, addresses, and other information that the said board determines necessary shall be presented for the approval of the state board of examiners of the state of Montana. The state auditor of the state of Montana is hereby authorized to draw and issue warrants for the payment of the same.

(2) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve fund if conditions permit, it shall not increase the levy enough in any year so that such addition to the reserve fund will exceed five per cent (5%) of the maximum risk written for that year and provided further, that the reserve fund shall not exceed the amount of one million two hundred thousand dollars ($1,200,000.00).

(3) The reserve fund hereby created shall be a continuous fund and the state board of hail insurance is hereby granted the power to draw from said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses, and provided further, that whenever there are no unpaid losses for prior years and whenever in any one (1) year the cost of administration, interest and losses for the current year shall be less than the sum of sixty cents (60¢) per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the state board of hail insurance shall not draw on the reserve fund for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance.

History: En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R. C. M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957.

Amendment

The 1957 amendment added subsec. 4 to subd. (1).

Repealing Clause

Section 2 of Ch. 20, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY

Section 82-3102. Authority and duties of the state agency for surplus property.
82-3105. Superintendent of public instruction—delegating powers and duties—bonding of employees of surplus property agency.
82-3106. Officers or employees authorized to secure transfer of surplus property.

82-3102. Authority and duties of the state agency for surplus property. (a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act,"

such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes of education, public health or civil defense, including research for any such purpose, and for such other purposes as may now or hereafter be authorized by federal law; (2) to warehouse such property; and (3) to distribute such property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code of 1954 within the state, to civil defense organizations of the state, or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institutions or activities as may now be or hereafter become eligible under federal law to acquire such property.

(b) The state agency for surplus property is hereby authorized to receive applications from eligible institutions for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate health or educational authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act.

(c) For the purpose of executing its authority under this act, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other action as is deemed necessary and suitable, in the administration of this act, to assure maximum utilization by and benefit to health, educational and civil defense institutions and organizations within the state from property distributed under this act.

(d) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as clearing house of information for the public and private nonprofit institutions, organizations and agencies referred to in subparagraph (a) of this section and other institutions eligible to acquire federal

surplus real property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions, organizations and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations and agencies in every way possible in the consummation of acquisitions or transactions hereunder.

(f) The state agency for surplus property, in the administration of this act, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, and make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the state.

History: En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957.

Amendment

The 1957 amendment completely revised this section. For section prior to amendment see parent volume.

82-3103. Repealed.

Repeal

This section (Sec. 3, Ch. 136, L. 1953), relating to cooperation with federal departments and agencies, was repealed by Sec. 4, Ch. 166, Laws 1957, effective March 7, 1957.

82-3105. Superintendent of public instruction—delegating powers and duties—bonding of employees of surplus property agency. The state superintendent of public instruction may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this act.

The state superintendent of public instruction may in his discretion bond any person in the employ of the state agency for surplus property handling moneys, signing checks, or receiving or distributing property from the United States under authority of this act.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957.

82-3106. Officers or employees authorized to secure transfer of surplus property. Any provision of law to the contrary notwithstanding, the governing board, or in case there be none, the executive head, of any state department, instrumentality, or agency or of any city, county, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this act through the state department of public instruction, donable property division under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and to obligate the state or political

subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by state department of public instruction, donable property division.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957.

Repealing Clause

Section 4 of Ch. 166, Laws 1957 read "Section 82-3103, Revised Codes of Montana, 1947, and all acts or parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 5 of Ch. 166, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 5—ACCEPTANCE OF AMENDMENTS TO ENABLING ACT

Section 83-503. Acceptance of congressional amendment to sec. 12 of the enabling act.

83-503. Acceptance of congressional amendment to sec. 12 of the enabling act. The state of Montana hereby accepts the amendment to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957, (Public Law 6, 85th Congress), which amendment reads as follows:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, that section 12 of the act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved February 22, 1889, is amended to read as follows: 'That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.'

"Sec. 2. This act shall take effect as of February 22, 1889." Approved February 26, 1957.

History: En. Sec. 1, Ch. 209, L. 1957.

Title of Act

An act accepting the amendment enacted by Congress to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957; and providing for an effective date.

Repealing Clause

Section 2 of Ch. 209, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 209, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

TITLE 84—TAXATION

Chapter 3. Classification of property for taxation—basis for taxation, 84-301, 84-308.
4. Assessment of property—powers, duties and liability of county assessor, 84-429.7 to 84-429.13.
6. Equalization of taxes by county boards of equalization, 84-602 to 84-604.
7. Equalization of taxes and administration and supervision of all tax laws by state board of equalization, 84-708.
15. License taxes—corporation license tax, 84-1501, 84-1503.
16. License taxes—electrical energy producers, 84-1601.
18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1801.1, 84-1812, 84-1816, 84-1817, 84-1833, 84-1834, 84-1839.
20. License taxes—metalliferous mines, 84-2004.
21. License taxes—natural gas distributors, 84-2102.
22. License taxes—oil producers, 84-2202.
26. License taxes—telephone companies, 84-2601, 84-2602.
33. Licenses—moving picture theaters, Repealed—Section 1, Chapter 33, Laws of 1957.
41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4132.1.
49. Income tax, 84-4902, 84-4907.1, 84-4910, 84-4914, 84-4923.1, 84-4943, 84-4956, 84-4957.
56. Cigarette tax—licenses—stamps, 84-5601, 84-5602, 84-5606 to 84-5609, 84-5621.

CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

Section 84-301. Classification of property for taxation.
84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

84-301. (1999) **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all water craft, harness, saddlery and robes.

Class Three. Livestock, poultry and the unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith; and all office or hotel furniture and fixtures.

Class Four. All land, town and city lots, with improvements, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

Class Six. Property formerly included in this class is now classified by section 84-308 of the Revised Codes of Montana, 1947.

Class Seven. All property not included in the six preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957.

Amendment

The 1957 amendment in Class Five, subd. (b) inserted the words "and co-operative rural telephone" and deleted a former subd. (d) which read "Industrial property included in Class Four, for a period of three years after such property is first assessed. Industrial property for the purposes of this act shall not be construed to include agricultural or commercial property" and rewrote Class Six, see Class Six above.

Repealing Clause

Section 2 of Ch. 88, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 88, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 4, 1957.

DECISIONS UNDER FORMER LAW

1951 Amendment Unconstitutional

Chapter 178 of Laws 1951 is an unconstitutional exercise of the legislative function to classify property for taxation. Victor Chemical Works v. Silver Bow County, — M —, 301 P 2d 730, 737. (Concurring and dissenting opinion, — M —, 301 P 2d 730, 737.)

Chapter 178 of Laws 1951, by permitting the reclassification of some industrial property into Class 5 while similar property is in Class 4 thwarts the mandate of sections 1 and 11 of Art. XII of the Constitution and is invalid. Victor Chemical Works v. Silver Bow County, — M —, 301 P 2d 730. (Concurring and dissenting opinion, — M —, 301 P 2d 730, 737.)

84-308. (2000.6) **Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state board of equalization shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

History: En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957.

Amendment

The 1957 amendment added all that portion of the third paragraph beginning with the words "on that portion of the true and full value and not represented by surplus * * *" to end of section.

Repealing Clause

Section 2 of Ch. 172, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 172, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

Section 84-429.7. Classification and appraisal—duties of county commissioners.
84-429.8. Classification and appraisal fund—tax levy for.
84-429.9. Assessments to be made on classification and appraisal.
84-429.10. Initiation and completion of classification and appraisal.
84-429.11. Notice of classification and appraisal to owners—appeals.
84-429.12. Classification and appraisal—general and uniform methods.
84-429.13. Work done under prior law.

84-429.1 to 84-429.6. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 198, L. 1955), relating to classification and appraisal of all taxable lands, were repealed by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957. For almost identical provisions see 84-429.7 to 84-429.13.

84-429.7. Classification and appraisal—duties of county commissioners. It is hereby made the duty of the board of county commissioners of the several counties of the state of Montana to accomplish, in such manner as the state board of equalization may direct, the following:

a. The classification of all taxable lands.

b. The appraisal of all taxable city and town lots.

c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state board of equalization. Such maps, plats, forms and books of record shall be official records of the county. A certified copy of all such records as may be desired shall be furnished to the state board of equalization, and the state board of equalization shall provide for the payment to the several counties of the cost of preparing such copy of the records so provided for, as they may require.

After compliance with the other provisions of this act, it shall be the duty of the board of county commissioners to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957.

Title of Act

An act providing for the classification of lands, and the appraisal of city and town lots and rural and urban improvements in the state of Montana for assessment and taxation purposes; defining the duties of the boards of county commissioners, county assessors, and the state board of equalization in connection therewith, providing for a tax levy; providing for an effective date and repealing sections 84-430 to 84-437 inclusive, Revised Codes of Montana of 1947, chapter 198 of the Session Laws of 1955, and all acts and parts of acts in conflict herewith.

84-429.8. Classification and appraisal fund—tax levy for. The board of county commissioners shall create and establish a fund to be known as the "Classification and Appraisal Fund," and may levy annually a tax not to exceed two (2) mills upon all property in the county subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of such fund, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by said board; and the board of county commissioners is hereby authorized to declare an emergency and issue such warrants in the manner provided by section 16-1907 of the Revised Codes of Montana of 1947.

History: En. Sec. 2, Ch. 191, L. 1957.

84-429.9. Assessments to be made on classification and appraisal. The county assessor must base the assessments of all lands, city and town lots, and all improvements on the classification and appraisal as made by the board of county commissioners.

History: En. Sec. 3, Ch. 191, L. 1957.

84-429.10. Initiation and completion of classification and appraisal. It is the intent of this act that classification and appraisal be initiated expeditiously, but in no event later than July 1, 1957 and shall be completed not later than five (5) years from the effective date of this act.

History: En. Sec. 4, Ch. 191, L. 1957.

84-429.11. Notice of classification and appraisal to owners—appeals. It shall be the duty of the board of county commissioners to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the board of county commissioners shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the board of county commissioners shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the

taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the board of county commissioners. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the board of commissioners he shall have the right to appeal to the state board of equalization whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957.

84-429.12. Classification and appraisal—general and uniform methods. It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timber lands.

History: En. Sec. 6, Ch. 191, L. 1957.

84-429.13. Work done under prior law. Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements, under the provisions of chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of this act.

History: En. Sec. 7, Ch. 191, L. 1957.

Repealing Clause

Section 8 of Ch. 191, Laws 1957 read "Sections 84-430 to 84-437, inclusive, of the Revised Codes of Montana, 1947, and chapter 198 of the Session Laws of 1955, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 9 of Ch. 191, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

84-430 to 84-437. (2024 to 2031) **Repealed.**

Repeal

These sections (Secs. 1 to 8, Ch. 239, L. 1921), relating to a uniform method of classification of property for tax purposes, were repealed by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957.

These sections had earlier been repealed by Sec. 7, Ch. 198, Laws 1955, effective March 4, 1955. See Repeal Note under these sections in the parent volume.

CHAPTER 6—EQUALIZATION OF TAXES BY COUNTY BOARDS OF EQUALIZATION

Section 84-602. Equalization of assessments.
84-603. Application for reduction in valuations.
84-604. Examination of applicant.

84-602. (2114) **Equalization of assessments.** The board has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the board shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known place of residence. The board also has power, in the event that any class of property is assessed as a class, at more or less than its actual value, by the county assessor and the valuation of such property within the county demands a general reclassification by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of county commissioners.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933; amd. Sec. 1, Ch. 196, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted the words "in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment" for the words "in such matter as it may by rule prescribe, to increase or lower any assessment," inserted the words "which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice" and inserted the words "or certified" before the word "mail" near the end of sentence.

84-603. (2115) **Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board on or before the 1st day of August, a written application therefor, verified by his oath. Said application shall state the post office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The board of county commissioners shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3674.

Amendment

The 1957 amendment inserted the words "state the post office address of the applicant" in the second sentence.

84-604. (2116) **Examination of applicant.** Before the board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry; except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of a certain class of property in the county. The testimony of all witnesses upon such hearing must be reduced to writing and preserved, and transcribed if taken in shorthand or stenotype. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933; amd. Sec. 3, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3675.

Amendment

The 1957 amendment substituted "any application" for "the application" and "each person" for "such person" in the first sentence; inserted the words "as provided in the preceding section" and the words "as such board of equalization" in the second sentence and added the third sentence.

Repealing Clause

Section 4 of Ch. 196, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 196, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

CHAPTER 7—EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

Section 84-708. Powers and duties.

84-708. (2122.8) **Powers and duties.** It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) to (17). * * * [Subdivisions (1) to (17), same as parent volume.]

(18) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957.

Amendment

The 1957 amendment in subd. 18 added the words "and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures"

and deleted a former subd. (19) which read "(19) To exercise and perform such further powers and duties as are or may be granted to or imposed upon the board by law."

Repealing Clause

Section 2 of Ch. 137, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 137, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section 84-1501. Corporation license tax—organizations exempt therefrom.
84-1503. Segregation of income within and without state.

84-1501. (2296) **Corporation license tax—organizations exempt therefrom.** The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock, or from net earnings of resident corporations, joint stock companies or associations whose net income is taxable under this title. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than ten dollars ($10.00).

There shall not be taxed under this title any income received by any—

First. Labor, agricultural or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

Fourth. Domestic building and loan associations or cooperative bank without capital stock, organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Labor agricultural or horticultural cooperatives organized and operated on a cooperative basis; (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 6 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done with the United States, state of Montana or its political subdivisions shall be exempt under this act. Any cooperative association or corporation engaged in the business of operating

a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis.

Twelfth. Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

Thirteenth. In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; reen. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957.

Amendment

The 1957 amendment substituted "five (5) per centum" for "three (3) per centum" both times it appears in the first paragraph and raised the minimum tax from $5 to $10.

Repealing Clause

Section 3 of Ch. 232, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 232, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-1503. (2297.1) **Segregation of income within and without state.** If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state board of equalization shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The board shall publish not less than once a year, all rules and regulations pertaining to this section. All decisions by the board under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer cannot change from one method of accounting to another method of accounting without first obtaining permission from the board.

History: En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957.

Amendment

The 1957 amendment added the proviso clause to the first sentence and added the second, third and fourth sentences.

Repealing Clause

Section 2 of Ch. 219, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section 84-1601. Electrical energy producers' license tax.

84-1601. (2343.1) Electrical energy producers' license tax. That in addition to the license tax now provided by law, each and every individual, firm, partnership, common law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of August, 1957, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and one-quarter per cent (1¼%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957.

Amendment

The 1957 amendment substituted "August, 1957" for "April 1934" and raised the license tax from 1% to 1¼%.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section 84-1801.1. Gasoline license tax—amount—evaporation and other loss.
84-1812. Distribution of proceeds of tax—funds.
84-1816. Use of state highway fund on federal highway system.
84-1817. Distribution of state highway construction funds.
84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
84-1834. Special fuel dealers' and special fuel users' records.
84-1839. Violations and penalties.

84-1801.1. Gasoline license tax—amount—evaporation and other loss. Beginning January 16, 1958, every dealer (as defined in section 84-1801 of the Revised Codes of Montana, 1947, and acts amendatory) shall, when engaged in the business of producing, refining, manufacturing or compounding gasoline for sale or use, or importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or use; pay to the state board of equalization, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to six cents (6¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1(a), 1(b) and subsection 8 of the Revised Codes of Montana, 1947 and acts amendatory) refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In

making the computation of license tax due and in making payment thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

History: En. Sec. 1, Ch. 230, L. 1957.

Title of Act

An act relating to a license tax for gasoline dealers; providing that such license tax shall be seven cents on each gallon of gasoline sold or distributed; providing for a deduction from such tax for evaporation; providing for an effective date for such tax; repealing the license tax provided in section 10 of chapter 39, Laws of Montana, 1945, as amended; and providing an effective date of this act; and repealing all acts and parts of acts in conflict herewith.

Repealing Clauses

Section 2 of Ch. 230, Laws 1957 read "The license tax of seven cents (7¢) a gallon of gasoline on dealers or distributors, provided for in section 10 of chapter 39, Laws of Montana, 1945, as amended, shall be repealed from and after January 15, 1958."

Section 3 of Ch. 230, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 230, Laws 1957 provided the act should be in effect from and after January 15, 1958.

Interim Gasoline Tax

Section 84-1801.1 becomes effective from and after January 15, 1958. Until such date the gasoline tax is that established by section 10 of chapter 39, Laws 1945; amended by Sec. 1, Ch. 167, Laws 1949; amended by Sec. 1, Ch. 255, Laws 1955; amended by Sec. 1, Ch. 229, Laws 1957. Such acts are repealed by section 2 of Ch. 230, Laws 1957 from and after January 15, 1958. Chapter 229 of Laws 1957 reads as follows:

"An act to amend section 10, chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana, 1945, as amended by chapter 255 of the Laws of the Thirty-fourth Legislative Assembly of the state of Montana, 1955, relating to the license tax paid by gasoline dealers to the state board of equalization and fixing the amount thereof; providing for an effective date; and repealing all acts and parts of acts in conflict herewith.

"Section 1. That section 10 of chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana, 1945, as amended by chapter 255 of the Laws of the Thirty-fourth Legislative Assembly of the state of Montana, 1955, be, and the same is hereby amended to read as follows:

"Section 10. For the purpose of providing funds for the payment of the interest upon the maturing principal of the state highway treasury anticipation debentures herein provided for, every dealer as referred to and defined in the gasoline license tax laws of the state of Montana now in effect, until the principal and interest of all debentures issued under the authority of this act shall have been paid, shall pay to the state board of equalization for deposit in the state treasury, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to seven cents (7¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1 (a), 1 (b) and subsection 8 (2381.11), Revised Codes of Montana, 1947, (and acts amendatory), for the period commencing March 31, 1957 and ending January 15, 1958, refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In making the computation of license tax due and in making payments thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon,

shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

"Section 2. All acts or parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect from and after March 31, 1957, to and through January 15, 1958."

84-1812. (2381.22) **Distribution of proceeds of tax—funds.** All money received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited and credited (a) seventy-five per centum (75%) to the state highway fund, and (b) twenty-five per centum (25%) to a special fund designated as "gasoline license drawback fund."

All money so collected and deposited in the gasoline license tax drawback fund shall be used for the purpose of making such refunds and paying such drawbacks as are authorized by law to be made or paid to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state, provided, however, that at the close of each fiscal year, the state treasurer shall transfer all money remaining unexpended in said gasoline license tax drawback fund to the state highway fund; provided, further, that if at any time the money in said gasoline license tax drawback fund is insufficient in amount to pay duly authorized and approved refunds or drawbacks, the state treasurer shall transfer from the state highway fund a sum or sums sufficient in amount to meet and pay all such outstanding authorized and duly approved refunds or drawbacks.

All money so collected and deposited or transferred to said state highway fund shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information hereby determined to be a proper administrative expense and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering of such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act; provided, that the total cost to the state of administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission, and said eight per centum (8%) shall be known as the administrative fund. Provided further that the expenditure for dissemination of public information shall not exceed an annual expenditure of eighty-five thousand dollars ($85,000.00).

History: En. Sec. 13, Ch. 19, L. 1927; amd. Sec. 1, Ch. 178, L. 1929; amd. Sec. 1, Ch. 231, L. 1953; amd. Sec. 1, Ch. 206, L. 1957.

Amendment

The 1957 amendment substituted the last sentence of this section for one which formerly read "Provided further that the expenditure for dissemination of public information shall not exceed three and one-half per cent (3½%) not to exceed an annual expenditure of sixty-five thousand dollars ($65,000.00) of the above mentioned administrative fund; provided, however, that said expenditures for the dissemination of public information shall terminate June 30, 1955."

84-1816. (2396.2) **Use of state highway fund on federal highway system.** All moneys of the state highway fund, including moneys arising from the license tax upon dealers in gasoline and motor fuels, but excluding moneys being held in such fund for refund or drawback purposes and expense of collection and enforcement, shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering on the federal highway system of highways in this state selected and designated under the provision of the federal aid act, approved July 11, 1916, and the federal highway act approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering of such other roads as have been or may be authorized by the laws of Montana. Provided, that the total net costs to the state for administration on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per cent (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission, and said eight per cent (8%) shall be known as the administrative fund. Provided further that the expenditure for dissemination of public information shall not exceed an annual expenditure of eighty-five thousand dollars ($85,000.00). It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 84-1817; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

History: En. Sec. 2, Ch. 18, L. 1927; amd. Sec. 1, Ch. 74, L. 1945; amd. Sec. 1, Ch. 264, L. 1947; amd. Sec. 1, Ch. 212, L. 1953; amd. Sec. 1, Ch. 241, L. 1953; amd. Sec. 1, Ch. 88, L. 1955; amd. Sec. 2, Ch. 206, L. 1957.

Amendment

The 1957 amendment increased the annual expenditure for dissemination of public information from $65,000 to $85,000.

Repealing Clause

Section 3 of Ch. 206, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-1817. (2396.3) **Distribution of state highway construction funds.** (1) Allotment of state construction funds for federal aid highway systems. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, the state highway commission shall allot available state construction moneys to the federal aid interstate highway system, the federal aid primary highway system, the federal aid secondary highway system and the federal aid urban highway system in proportion to the amounts necessary to match the respective amounts of federal aid available for expenditure on these systems at the beginning of each fiscal year.

(2) Apportionment of state construction moneys to the federal aid primary highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, the state highway commission shall compute from its records the percentage of incompleted mileage of the federal aid primary highway system within each of said districts which each district respectively bears to the total incompleted mileage of said federal aid primary highway system within this state at that time, and the actual respective percentages of incompleted mileage in each district as so computed and determined at the beginning of each fiscal year shall be used in apportioning construction moneys for that year to each of the said financial districts from the state highway fund as defined and provided by section 84-1816. As a basis for the determination of the amount of incompleted mileage of said federal aid primary highway system in this state for each fiscal year, the state highway commission shall adopt as the criterion the current definition, as prescribed by the bureau of public roads, for a fully and adequately completed federal highway in this state. This criterion shall be considered as a one hundred per cent (100%) completed federal highway; and federal highway mileage which is only partially completed under the application of this criterion, shall be considered as only partially completed on a percentage basis, this to be determined from the relative estimated percentage costs of construction already performed and of additional construction which must be performed to bring said mileage up to the standard of said criterion.

(3) Apportionment of state construction moneys to the federal aid secondary highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid secondary highway system shall be apportioned to each of the financial districts as defined in section 84-1815 on a percentage basis as determined in the following manner: One-fourth (¼) in the ratio of land area in each financial district to the total land area in the state; one-fourth (¼) in the ratio of the rural population in each financial district to the total rural population in the state; and one-fourth (¼) in the ratio of the rural road mileage in each financial district to the total rural road mileage in the state; one-fourth (¼) in the ratio of value

of rural lands in each financial district to the total value of rural land in the state. Said moneys to be further apportioned to the counties within each financial district in the same ratio of land area, rural population and rural road mileage; and value of rural lands, provided, that to the extent necessary to permit orderly programming and construction of projects, expenditure of construction money in any county may exceed the amount apportioned to that county with the provision that such excess expenditure shall not exceed three (3) times the amount of the last annual apportionment to that county and that any excess expenditures shall be deducted from future apportionments to that county.

For the purposes of this section, rural population is defined as total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the federal census. Decennial census figures for population shall be adjusted during the interim between censuses in accordance with the percentage of change occurring in annual motor vehicle registration figures for each county.

For the purposes of this section, rural road mileage is defined as all road mileage outside incorporated cities, exclusive of road mileage on the federal aid rural primary highway system. Rural road mileage figures reported by the road inventory of the state highway commission shall be used in determining rural road mileage as defined in this section.

(4) Apportionment of state construction moneys to the federal aid urban highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid urban highway system shall be apportioned to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in the state for all cities over five thousand (5,000) population.

For the purpose of this section, urban population is defined as population within the incorporated limits of cities over five thousand (5,000) population and also the population within unincorporated urban fringe areas as delineated and reported in the federal census.

To the extent necessary to permit orderly programming and construction of projects, expenditures of construction of projects, expenditures of construction money in any urban city may exceed the amount apportioned to that city with the provision that such excess expenditure shall be deducted from future apportionments to that city.

(5) Apportionment of state construction moneys to the federal aid interstate highway system. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid interstate highway system shall be apportioned to each of the financial districts, as defined in section 84-1815, Revised Codes of Montana, 1947, in proportion to the estimated cost of constructing or reconstructing the system in each district as compared with the total estimated cost of constructing or reconstructing the entire system within the state. The cost estimates to be used for apportioning said state construction funds shall be those costs developed by the state highway commission in accordance with the provisions of

subsection (d) of section 108 of title I of the federal aid highway act of 1956.

(6) The state highway commission may vary the expenditures made in any financial district under the provisions of this act to the extent of fifteen per cent (15%) above the amount of money allocated to such district in any year for the federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system, provided that the allocation of construction money to such district for the next succeeding fical year shall be decreased by an amount equal to such increased expenditures.

History: En. Sec. 3, Ch. 18, L. 1927; amd. Sec. 1, Ch. 102, L. 1937; amd. Sec. 1, Ch. 213, L. 1939; amd. Sec. 1, Ch. 175, L. 1943; amd. Sec. 1, Ch. 87, L. 1945; amd. Sec. 1, Ch. 240, L. 1953; amd. Sec. 1, Ch. 113, L. 1957.

Amendment

The 1957 amendment in subd. (1) substituted "July 1, 1957" for "July 1, 1953," inserted the words "the federal aid interstate highway system" and substituted the words "available for expenditure on these systems at the beginning of each fiscal year" for the words "apportioned to these systems" which appeared at the end of said subd. (1); added a new subd. (5); renumbered former subd. (5) as subd. (6) and in subd. 6 inserted the words "for the federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system."

Repealing Clause

Section 2 of Ch. 113, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits. (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncancelled fuel dealers' license issued to him by the board.

Every special fuel user shall obtain from the board, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any member of the state board of equalization or any authorized employee of said board, or any other law enforcement officer.

(b) to (g). * * * [Subdivisions (b) to (g), same as parent volume.]

(h) Revocation, suspension, cancellation and surrender of license and permit: The board may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the board shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time

prior to and pending such hearing the board may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the board of any such license or permit, the holder thereof shall immediately surrender the same to the board for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the board for cancellation.

The board shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i). * * * [Same as parent volume.]

(j) Additional bond or deposit: The board may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 2 (i) [84-1831 (i)], if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the board, said board forthwith shall cancel his license.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957.

Amendment

The 1957 amendment in subd. (a) deleted a former second sentence which read "Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, it shall be unlawful for any person to consume special fuel for the propulsion of a motor vehicle upon the highways of this state unless such person is the holder of an uncancelled fuel user's license issued to him by the board" and substituted the present second paragraph for one which read "Every special fuel user shall obtain prior to the use of special fuel for the propulsion of a motor vehicle or vehicles, in this state, a special fuel vehicle permit for such vehicle or vehicles operated by him upon the highways as herein defined"; in subd. (h) inserted in the caption to said subdivision the word "suspension" and deleted the reference to "bond"; in the first sentence substituted the word "any" for "a" and in the second sentence substituted the words "of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them," for the words "to show cause within thirty (30) days of the date of the notice why the license or permit" and added the second paragraph; in subd. (j) substituted the word "its" for "his" appearing before the word "opinion" and changed spelling of the word "therefor" to "therefore."

84-1834. Special fuel dealers' and special fuel users' records. (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the board may require, and shall produce them for the inspection of the board at any time during the business hours of the day.

(b) Retention of records: Said records, receipts, invoices and other pertinent papers shall be required to be kept for a period of at least five

(5) years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957.

Amendment

The 1957 amendment inserted the words "and inspection of" to the heading of subd. (a) and substituted the words "and shall produce them for the inspection of the board at any time during the business hours of the day" for a former last sentence of subd. (a) which read "The records, receipts, invoices and other pertinent papers shall be available at all times during the business hours of the day, to the board" and in subd. (b) substituted the word "on" for the word "of."

84-1839. Violations and penalties. (a) Penalties and remedies: Any person violating any provision of this act is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one hundred dollars ($100.00) nor more than two thousand dollars ($2,000.00) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

(b) Penalties are cumulative: The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this act.

History: En. Sec. 10, Ch. 162, L. 1955; amd. Sec. 3, Ch. 216, L. 1957.

Amendment

The 1957 amendment deleted former subd. (a) for text of which see parent volume, relettered former (b) to (a) and (c) to (b), and in subd. (a) substituted the word "act" for the word "section."

Repealing Clause

Section 4 of Ch. 216, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

Section 84-2004. Amount of tax.

84-2004. (2344.4) **Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, shall be one dollar, together with an additional sum or amount equal to an amount computed on the gross value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates:—¼ of 1% of the amount by which such gross value of products exceeds $100,000.00 and does not exceed $250,000.00; ½ of 1% of the amount by which such gross value of product exceeds $250,000.00 and does not exceed $400,000.00; ¾ of 1% of the amount by which the gross value of product exceeds $400,000.00 and does not exceed $500,000.00 and 1¼% of the amount by which the gross value of product exceeds $500,000.00.

History: En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957.

Amendment

The 1957 amendment increased the per cent of tax of the amount by which the gross value of product exceeds $500,000.00 from 1% to 1¼%.

Repealing Clause

Section 2 of Ch. 220, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 220, Laws 1957 provided the act should be in effect from and after July 1, 1957.

CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

Section 84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.

84-2102. (2408.2) **Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.** Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within the state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning July 1, 1957, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to one-half (½) of one (1) cent for each one thousand (1000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipe line to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale, and that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths (4/10) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

History: En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957.

Amendment

The 1957 amendment substituted the word "consumers" for the words "the

public" each time it appears in this section and also substituted "beginning July 1, 1957" for the year "1934" and "one-half (½)" for "three-eighths (⅜)."

Repealing Clause

Section 2 of Ch. 205, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

Section 84-2202. Oil producers' license tax—amount—exceptions.

84-2202. (2398) **Oil producers' license tax — amount — exceptions.** Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business; computed at the following rates:

(a) two per cent of an amount determined by multiplying the number of producing wells of such person on each lease or unit by the total gross value of the first four hundred fifty (450) barrels of petroleum and other mineral or crude oil produced from such lease or unit in each calendar quarter;

(b) two and one-half per cent of the total gross value of all such production of such person in excess of the first four hundred fifty (450) barrels per calendar quarter from each lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such pertroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957.

Amendment

The 1957 amendment substituted "beginning July 1, 1957" for the year "1923"; added new subd. (a) by substituting a semicolon and the words "computed at the following rates:" for the words "in an amount equal to two per centum of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year" and added subd. (b) and the words "two and one-half per cent of the total gross value of all such production of such person in excess of the first four hundred fifty (450) barrels per calendar quarter from each lease or unit."

Repealing Clause

Section 2 of Ch. 221, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 221, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

Section 84-2601. Annual tax levied on gross income of telephone business.
84-2602. Statement and payment on gross income—certain business excluded.

84-2601. Annual tax levied on gross income of telephone business. That on and after the first day of April, 1957, there is hereby levied and shall be collected an annual tax of one and one-half per cent (1½%) of the gross income, in excess of two hundred fifty dollars ($250.00) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957.

Amendment

The 1957 amendment substituted "April, 1957" for "April, 1947" and raised the annual tax from 1¼% to 1½%.

84-2602. Statement and payment on gross income—certain business excluded. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending September 30, 1957, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in the amount equal to one and one-half per cent (1½%) of such gross income.

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957.

Amendment

The 1957 amendment substituted "September 30, 1957" for "June 30, 1937" and "one and one-half per cent (1½%)" for "(1¼%)."

Repealing Clause

Section 3 of Ch. 213, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 213, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

CHAPTER 33—LICENSES—MOVING PICTURE THEATERS

(Repealed—Section 1, Chapter 33, Laws of 1957)

84-3301 to 84-3307. Repealed.

Repeal

These sections (Secs. 1 to 6, 8, Ch. 91, L. 1937; amd. Sec. 1, Ch. 74, L. 1953), relating to licenses for moving picture theaters, were repealed by Sec. 1, Ch. 33, Laws 1957, effective April 1, 1957.

CHAPTER 38—LEVY OF TAXES

84-3804. Increase of state tax levy—support units of university.

Referendum

Chapter 218 of Laws 1957 provides for a referendum on a measure providing for the state tax levy on real and personal property. The section proposed reads as follows: "That the rate of taxation on real and personal property for state purposes, as is hereafter defined, for each year for a period of ten (10) years beginning with the year 1959; shall be increased six (6) mills on each dollar of taxable valuation in addition to the levy which is now or may hereafter be authorized by section 9 of article XII of the Constitution of the state of Montana, and the legislative assembly is authorized and empowered to levy an additional tax for state purposes for each of said years of not exceeding six (6) mills on each dollar of taxable valuation for state purposes, and all money derived from said additional levy of six (6) mills for each of said years or so much thereof as may be necessary shall be appropriated by the legislative assembly for the support, maintenance and improvement of the State University of Missoula, the State College of Agriculture and Mechanic Arts at Bozeman, the Montana State School of Mines at Butte, the Western Montana College of Education at Dillon, the Eastern Montana College of Education at Billings, and the Northern Montana College at Havre, now comprising the units of the university of Montana, together with the agricultural experiment station and its branches and substations, and the agricultural extension service, including the soil survey and grain laboratory." Laws 1957, Ch. 218, Sec. 1.

The referendum measure is to be submitted to the electors at the general election in November 1958. Under section 4 of Ch. 218, Laws 1957, if a majority of the votes cast at the referendum election are in approval of the act, Ch. 217 of Laws 1947 (84-3804) is repealed.

CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section 84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken.

84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken. That from and after the passage and approval of this act, any hospital, charitable corporation, or nonprofit association having an equitable or legal interest in real estate heretofore sold for taxes or assessments to any county, or which has been struck off to any county

when the property was offered for sale, or to which real property a lien for taxes or assessments has attached, and where such sale or tax lien is more than twenty (20) years old, and no assignment of the certificate of such sale or of said tax lien has been made, and no action for the issuance of a tax deed has been taken, shall be permitted to redeem the same and pay such tax lien, by paying the original tax or assessment due thereon, without the payment of any penalty or interest thereon. Such redemption of tax sale or payment of tax lien must be made on or before the 1st day of December, 1957, if it is to be made without the payment of penalty or interest. This act shall not apply to the purchaser of any certificate of sale made prior to the passage and approval of this act.

History: En. Sec. 1, Ch. 112, L. 1957.

Title of Act

An act to permit real property to be redeemed from tax sale or tax lien where such sale or lien is more than twenty (20) years old, and no assignment thereof has been made, and no proceedings for tax deed initiated, by paying the original tax or assessment, provided such original taxes or assessment be paid on or before December 1, 1957; providing for a constitutionality provision and providing for an effective date and repealing all acts and parts of acts in conflict herewith.

Separability Clause

Section 2 of Ch. 112, Laws 1957 read "If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portion of this act."

Repealing Clause

Section 4 of Ch. 112, Laws 1957 read "All acts and parts of acts are hereby repealed."

Effective Date

Section 3 of Ch. 112, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

84-4151. (2209) Notice of application for tax deed.

Affidavit

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by this section, such affidavit was defective and hence the tax deed is fatally defective. Bentley v. Rosebud County, 230 F 2d 1.

84-4156. (2212) Affidavit showing notice given—sum allowed therefor.

Affidavit

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by section 84-4151, such affidavit was defective and hence the tax deed fatally defective. Bentley v. Rosebud County, 230 F 2d 1.

84-4158. (2214) Procedure in actions to quiet title to tax deed property.

Order Requiring Deposit

This section, requiring the court upon hearing to fix the amount of taxes, interest, penalties, and money spent in improving the property and requiring a deposit of such amount does not authorize the court to postpone such determination and merely requires a bond be deposited to cover such amount. The court's duty is to determine the amount necessary for plaintiff to deposit in court and then fix the time for its payment. State v. District Court of Fifth Judicial District, — M —, 295 P 2d 1042, 1044.

CHAPTER 49—INCOME TAX

Section 84-4902. Rate of income tax.
84-4907.1. Veterans' bonus—exemption from income tax law.
84-4910. Exemptions.
84-4914. Returns and payment of tax—penalty and interest—refunds—credits.
84-4923.1. Review by court.
84-4943. Deduction and withholding of tax from wages—amount.
84-4956. Credits and refunds.
84-4957. Income tax refund account.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year upon the net income of every individual subject to this tax, after making allowance for exceptions and deductions, as hereinafter provided, a tax at the following rates, to-wit:

(a) On the first one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of one per centum (1%);

(b) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of one and one-half percentum (1½%);

(c) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of two per centum (2%);

(d) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of two and one-half per centum (2½%);

(e) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of three per centum (3%);

(f) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of three and one-half per centum (3½%);

(g) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of four per centum (4%);

(h) On any net income in excess of seven thousand dollars ($7,000.00) at the rate of five per centum (5%).

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957.

Amendment

The 1957 amendment completely revised the rates of income tax (subds. (a) to (h)). For this portion of this section before amendment see parent volume.

Repealing Clause

Section 2 of Ch. 228, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 228, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the board, in the same manner as other income tax refund claims are paid.

History: En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957.

Amendment

The 1957 amendment inserted the words "under the Korean Bonus Law and the" and deleted the words "pursuant to Initiative No. 54, more commonly known as the" which appeared before the words "Veterans' Bonus Law" and deleted the words "the effective date of which was December 6, 1950," which appeared after the words "Veterans' Bonus Law."

84-4910. (2295.10) **Exemptions.** (a) Allowance of deductions. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and Spouse. An exemption of six hundred dollars ($600.00) for the taxpayer; and an additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate or joint return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred dollars ($600.00) for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than six hundred dollars ($600.00), or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term "student" means an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins

(A) Is a full time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state.

For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(1) A son or daughter of the taxpayer, or a descendant of either,
(2) A stepson or stepdaughter of the taxpayer,
(3) A brother, sister, stepbrother, or stepsister of the taxpayer,
(4) The father or mother of the taxpayer, or an ancestor of either,
(5) A stepfather or stepmother of the taxpayer,
(6) A son or daughter of a brother or sister of the taxpayer,
(7) A brother or sister of the father or mother of the taxpayer,
(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,
(9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or
(10) An individual who

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section

(1) The terms "brother" and "sister" include a brother or sister by the halfblood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(h) Determination of Marital Status. For purposes of this part

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

History: En. Sec. 10, Ch. 181, L. 1933; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 233, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 233, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-4914. (2295.14) **Returns and payment of tax—penalty and interest—refunds—credits.** (1) Every person having a net income for the taxable year of six hundred dollars ($600.00) or over, if single or if married and not living with or supporting a husband or wife or family, or of twelve hundred dollars ($1,200.00) or over, if married and living with husband or wife, or if he is the head of a family, or a gross income for the taxable year of twelve hundred dollars ($1,200.00) or over, regardless of the amount of his net income, shall be liable for an income tax return, to be filed on such forms and according to instructions set forth by the board.

If any such person is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such persons.

(2) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939, and 84-4943 as amended shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943 as amended and/or any payment made by reason of an estimated tax return provided for in section 84-4939 as amended, provided however, the tax so computed is greater by one dollar ($1.00) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar ($1.00) the amount of the income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(3) As soon as practicable after the return is filed, the board shall examine and verify the tax.

(4) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of one per centum (1%) per month or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars ($2.00). Interest will be computed at the rate of one per centum (1%) per month for each month or fraction thereof on the additional assessment with penalty added. Except unless otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six per centum (6%) per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957.

Amendment

The 1957 amendment divided this section into subdivisions adding new subds. (2) to (4). Subdivision (1) which was formerly the first paragraph has been substantially changed. For text of this paragraph before amendment see parent volume.

84-4923. (2295.23) Repealed.

Repeal

This section (Sec. 23, Ch. 181, L. 1933; amd. Sec. 2, Ch. 58, L. 1955), relating to review of board's findings on application for revision, was repealed by Sec. 2, Ch. 212, Laws 1957.

84-4923.1. Review by court. The determination of the state board of equalization may be reviewed in the district court for Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state board of equalization within six (6) months after the receipt of notice of the decision of the state board of equalization. Upon the serving of summons upon the state board of equalization as in civil action, the cause shall proceed as other civil cases. Service upon the state board of equalization may be made by serving one copy upon the secretary of the state board of equalization or one copy upon the chairman of the state board of equalization. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957.

Title of Act

An act providing for review by the court of any determination of the board of equalization in respect to income taxes and repealing section 84-4923, Revised Codes of Montana, 1947, and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 212, Laws 1957 repealed section 84-4923 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict therewith.

84-4925. (2295.25) **Repealed.**

Repeal

This section (Sec. 25, Ch. 181, L. 1933; amd. Sec. 1, Ch. 78, L. 1951), relating to payment, penalty, interest, and refund of excess payment of tax, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4943. Deduction and withholding of tax from wages—amount. Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the board. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 4 of Ch. 227, Laws 1957 read "That section 84-4925 of the Revised Codes of Montana, 1947, as amended by section 1 of chapter 78 of the Laws of 1951, section 84-4944 of the Revised Codes of Montana, 1947, being section 3 of chapter 246 of the Laws of 1955, section 84-4949 of the Revised Codes of Montana, 1947, being section 3 of chapter 246 of the Laws of 1955, section 84-4952 of the Revised Codes of Montana, 1947, being section 11 of chapter 246 of the Laws of 1955, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 5 of Ch. 227, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-4944. Repealed.

Repeal

This section (Sec. 3, Ch. 246, L. 1955), relating to the adjustment and amount of wages exempt, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4949. Repealed.

Repeal

This section (Sec. 8, Ch. 246, L. 1955), relating to the short form return, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4952. Repealed.

Repeal

This section (Sec. 11, Ch. 246, L. 1955), relating to including withholding tax deductions in gross income, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4956. Credits and refunds. Where there has been an overpayment of any income tax imposed by this chapter, the amount of such overpayment shall be credited against any income tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

No such credit or refund shall be allowed or made after three (3) years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer. Within six (6) months

after the claim is filed the state board of equalization shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the said taxpayer and shall grant a hearing thereon before the state board of equalization. If the board disapproves a claim for refund, review of the determination of the board may be had as otherwise provided in this chapter.

History: En. Sec. 1, Ch. 138, L. 1957.

Title of Act

An act relating to credits and refunds; providing for the period within which claim must be made; providing for a hearing upon the claim and for review by the court, by the taxpayer and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 138, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-4957. Income tax refund account. There is hereby established a special fund designated "Income Tax Refund Account." All money received by the state treasurer in payment of taxes levied under the provisions of state income tax shall be deposited in said fund. All money so collected and deposited in the "Income Tax Refund Account," or so much thereof as is necessary, shall be used for the purpose of making such refunds as are authorized by the Montana income tax law and are hereby appropriated for this purpose. All unexpended balances in excess of one hundred thousand dollars ($100,000.00) on hand in said fund at the end of each calendar month shall be deposited to the credit of the state general fund and the state public school equalization fund in the proportions specified in section 84-1901, Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 211, L. 1957.

Title of Act

An act providing for an income tax refund account and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 211, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

Section 84-5601. Definitions.
84-5602. Distributors' and dealers' license—application—fees.
84-5606. The tax.
84-5607. Affixing of insignia.
84-5608. Insignia purchased at discount.
84-5609. Use of tax stamping meters.
84-5621. Clerical and field assistants.

84-5601. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(a) The word "board" shall mean the state board of equalization of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization, or association however formed.

(c) The word "insignia" shall mean the impression or mark approved by the state board of equalization, under the provisions of this act.

(d) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to distributors and retailers in original cases.

(e) The word "distributor" shall mean any person engaged in the business of producing or manufacturing cigarettes or importing any thereof into this state, for purpose of distribution or sale.

(f) The words "licensed distributor" shall mean distributor duly licensed under the provisions of this act.

(g) The word "dealer" shall mean any person other than a distributor, who is engaged in the business of selling cigarettes at retail, including persons who sell cigarettes at retail through cigarette vending machines.

(h) The words "licensed dealer" shall mean any person other than a distributor, who is duly licensed under the provisions of this act.

(i) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, gift, barter or exchange.

History: En. Sec. 1, Ch. 289, L. 1947; amd. Sec. 1, Ch. 18, L. 1957.

Amendment

The 1957 amendment deleted former subd. (c) for text of which see parent volume and relettered subds. (d) to (j) as subds. (c) to (i); in subd. (c) [former (d)] deleted the words "used in lieu of stamps" which appeared after the word "equalization" and in subd. (g) [former (h)] substituted the words "including persons who sell cigarettes at retail through" for the words "and shall also mean."

84-5602. Distributors' and dealers' license—application—fees. Every such distributor or dealer shall secure a license from the board before engaging in the business of distributor or dealer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by each distributor or dealer within the state of Montana. Cigarette vending machines shall not be considered to be places of business but a separate application and a separate license shall be required for each cigarette vending machine owned, controlled or operated within the state of Montana. Application for such license shall be made on forms prescribed by the board, which shall state the name and address of the applicant, the name, address and place of business to be licensed, the type of business, or such other information as the board may require for the proper administration of this act. Each application for a distributor's license shall be accompanied by a fee of fifteen dollars ($15.00). Each application for a dealer's license shall be accompanied by a fee of five dollars ($5.00). No dealer shall be granted a distributor's license except a dealer who also performs, in the usual course of business, a distributor's function. Each license so issued shall be permanently and prominently displayed on the premises or cigarette vending machine covered by the license. Distributors and dealers licensed under this act may buy, sell or have in their possession, only cigarettes which have the insignia provided for in this act on each individual package. The insignia provided for in this act shall be sold to, and affixed by, licensed distributors and licensed dealers only. A distributor's license shall not authorize the holder thereof to make sales of cigarettes at retail in less than carton lots.

History: En. Sec. 2, Ch. 289, L. 1947; amd. Sec. 2, Ch. 18, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted "the business of distributor or dealer" for "such business" and deleted the words "or continuing to engage therein, after July 1, 1947" which appeared at the end of the sentence; in the second sentence substituted "each distributor or dealer" for "such person"; added the third sentence; in the fourth sentence substituted "or" for "and"; in the seventh sentence substituted "dealer" for "retailer" and deleted the words "or wholesaler's" which appeared between the words "distributors" and "function"; in the eighth sentence inserted the words "or cigarette vending machine"; in the ninth sentence substituted "only cigarettes which have the insignia" for "only such cigarettes upon which has the stamp or insignia" in the tenth sentence deleted the words "stamps or" which appeared before the word "insignia" and substituted "licensed dealers" for "retailers"; from the eleventh sentence deleted a proviso clause which read "provided, however, before said distributor shall make any such sale at retail, the stamp or insignia shall be affixed to each individual package" and also deleted a former twelfth sentence which read "Each cigarette vending machine shall be licensed at a particular place of business, provided that only one machine is to be licensed at a particular place of business where the licensee has more than one machine in operation."

84-5606. The tax. Subdivision—(1) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to-wit: Five cents (5¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then five cents (5¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

Subdivision—(2) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (1) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as hereby amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, or in said Korean War.

Subdivision—(3) From and after the effective date of this amendatory act of the Thirty-fifth Legislative Assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (1) and (2) of this section 84-5606,

as amended by said section 16 of said Initiative Measure No. 54, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One (1) cent on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by this amendatory act of said Thirty-fifth Legislative Assembly, and the payment of the interest thereon, and the payment of the expenses of administration of this amendatory act.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957.

Compiler's Note

This section was amended three times in the 1957 Session. Once by chapter 18, once by chapter 44 and once by chapter 222. Neither chapter 18 nor 222 provided for a specific effective date while chapter 44 was effective February 26, 1957. Chapter 18 was signed by the Governor, February 18, 1957; chapter 44 was signed February 26, 1957; and chapter 222 was signed March 12, 1957. The acts do not seem to be in conflict with one another, hence the Compiler has made a composite section incorporating the changes made by each chapter. For specific changes, see Amendments below.

Amendments

The amendment by Ch. 18, Laws 1957 in the last paragraph substituted "dealer" for "retailer" in the first sentence; substituted "insignia" for "stamps" in the same sentence; deleted a former second sentence in that paragraph which read "Said stamps shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe"; substituted "insignia affixed" for "stamp to affix," substituted "insignia" for "stamp" before the words "will be destroyed" and substituted "act" for "law" after the words "provided for in this."

The amendment by Ch. 44, Laws 1957 in the second paragraph of subdivision (2) inserted "under the authority of said Initiative No. 54 as hereby amended"; substituted "residents of Montana" for "residents of this state"; added "or in said Korean War" and added subdivision (3). The amendment did not carry any of the changes made by chapters 18 and 222.

The amendment by Ch. 222, Laws 1957 in subdivision (1) increased the tax from 2¢ to 5¢ and in the last paragraph, carried the same change as made by Ch. 18 in the first sentence; reinstated the second sentence, which had been deleted by Ch. 18; substituted "insignia" for "stamps" in that sentence and substituted "insignia" for "stamp" in the third sentence. This amendment did not carry any of the change made by Ch. 44, Laws 1957.

INITIATIVE MEASURE NO. 54 AMENDMENTS

Initiative Measure No. 54 (Laws 1951, pps. 781 to 790) was amended by chapter 44 and by chapter 45 of the 1957 Session. These acts read as follows:

Chapter 44, Laws 1957

An act to amend Initiative Measure No. 54, adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, by amending section 1 thereof, defining terms; by amending section 2 thereof so as to provide for the payment of an honorarium to persons serving on active duty during the Korean War; authorizing issuance of six million dollars ($6,000,000.00) of limited obligation bonds or so much thereof as may be necessary to supplement the moneys now in the "War Veterans' Compensation Fund" sufficiently to make the payments provided for in said Initiative No. 54 as hereby amended; by adding thereto a new section to be numbered 14-A, providing for the deposit of moneys from the sale of such additional bonds in said "War Veterans' Compensation Fund"; amending section 16 of said Initiative No. 54, and amending sections 84-5606 and 84-5621, Revised Codes of Montana, 1947, as amended, by providing an additional excise tax upon the sale of cigarettes in the state of Montana; said moneys to be deposited in the "War Veterans' Compensation Bond Retirement Fund No. 2" for the payment of such additional bonds and interest thereon and creating such fund; making an appropriation of the moneys now remaining in the "War Veterans' Compensation Fund" not needed for the payment of the honorarium to persons who served in World War II and of the funds derived from the sale of said bonds; by adding a section to be numbered 17-A, providing that nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54; providing that said Initiative No. 54 as by this act amended shall be construed as though it had been originally passed with the amendments made by this amendatory act, if such construction does not conflict with express provisions of this amendatory act; providing limits of time within which claims under subdivisions (b), (c), and (d) of section 2 of said Initiative No. 54, as said section is by this amendatory act amended, under section 3 of said Initiative No. 54 as by this amendatory act amended, or under section 5 of said Initiative No. 54 as by this amendatory act amended, may be filed; making incidental amendments of the sections of said Initiative No. 54 in this amendatory act specifically referred to, germane to the general purpose of this amendatory act and designed to facilitate the administration thereof; providing that if any part of this amendatory act shall be held invalid, such invalidity shall not affect the other provisions of this act; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

WHEREAS, the Korean War began before the submission of Initiative No. 54, ADOPTED by the vote of the people of Montana at the regular General Election of November 7, 1950, but too late to permit the inclusion in the provisions of said act of persons in the military service during said Korean War; and

WHEREAS, it was the intent of the people of Montana to recognize by the honorarium provided in said Initiative No. 54 all residents of Montana rendering military service on behalf of said state in the then emergency; and

WHEREAS, said Korean War was a recrudescence of said World War II and properly includable within the provisions of said Initiative No. 54,

Section 1. That section 1 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 1. As used in this law.

(a) The term "World War II" means the period between December 7, 1941, and September 2, 1945, both dates inclusive.

(b) The term "Korean War" means the period between June 25, 1950, and October 16, 1953, both dates inclusive.

(c) The term "Korean Theatre" means the Korean Peninsula and the waters surrounding said Peninsula, the islands of Japan and other territory upon which personnel of the United Nations were based during said Korean War or operating in the presence of the Korean Conflict.

(d) The term "Military Forces" as applied to World War II means the Army, the Navy, the Marine Corps, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, all Air Forces, and all other groups and services in and forming a part of the Armed Services under the control and subject to the discipline of the War Department or the Navy Department of the United States, and engaged in the prosecution of World War II.

(e) The term "Military Forces" as applied to the Korean War means the Army, the Navy, the Marine Corps, the

Air Force, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, and all other groups and services forming a part of the Armed Services under the control and subject to the discipline of the Department of Defense of the United States and on active duty during the period of said Korean War. The term "Department of Defense" as herein used means all of the branches of the Armed Services of the United States acting under the unified control of the Department of Defense.

(f) The term "Military Service" means service on active duty by any person in any of the military forces at any time during World War II or during said Korean War.

(g) The term "Person" includes female as well as male.

(h) The term "Serviceman" means a person who is entitled to receive payments under section 2 of this law.

(i) The term "Resident of Montana" means a person who was in military service and who at the time of his or her entry into such military service had his or her home in Montana. A person who, on December 7, 1941, or in the case of the Korean War, on June 25, 1950, was serving on active duty in any of the armed services of the United States and who at the time of his or her then last entry into such service made his or her home in Montana and who was in the military service at some time in World War II, or during the Korean War, shall be deemed a resident of Montana, unless he or she, after such last entry, and before entry into military service in either such war, had established and was then maintaining a home in some other state; and any such serviceman whose parents or surviving parent then resided in Montana, shall be deemed a resident of Montana.

(j) The term "Continental Limits of the United States" means the area of the 48 states and the District of Columbia, to high water mark on its water boundaries.

Section 2. That section 2 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 2. In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War II, and in the prosecution of said Korean War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to,

(a) Each resident of Montana who was in military service as a member of any branch of the military forces of the United States at some time during World War II an honorarium, or adjusted compensation, in the sum of ten dollars ($10.00) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars ($15.00) for each month and major fraction of a month for such service outside the continental limits of the United States:

(b) Each resident of Montana who was in military service at some time during the Korean War, and during part or all of the period of such service was in said Korean Theatre, an honorarium, or adjusted compensation, in the sum of fifteen dollars ($15.00) for each month and major fraction of a month of such service in said Korean Theatre, and ten dollars ($10.00) for each month and major fraction of a month of such service outside said Korean Theatre, provided further that any serviceman who, while on active duty in said Korean Theatre during said Korean War, shall have suffered disease or injury from any cause whatsoever, including injury from exposure to weather and/or weather conditions, and in line of duty, and is hospitalized therefor by any of the armed services of the United States he or she shall be deemed, for the purpose of this amendatory act, to have been in military service in said Korean Theatre as long as he or she shall be or have been continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, and wherever situated, subject to the limitation in this subdivision hereinafter specified; provided further that any serviceman who shall have been taken prisoner by the enemy in said Korean Theatre, and who shall have been classified by any of said armed services under the Department of Defense as a prisoner of war, shall receive the sum of fifteen dollars ($15.00) for each month and major fraction of a month during which he or she was so held by the enemy as such prisoner; but any such prisoner of war shall be paid not less than three hundred dollars ($300.00); and provided, finally, that no serviceman shall be paid, under any of the provisions of this subdivision, more than six hundred dollars ($600.00);

(c) Each resident of Montana who was in military service during said Korean War, but whose military service was wholly outside said Korean Theatre, an honorarium, or adjusted compensation of ten dollars ($10.00) for each month and major fraction of a month of such service;

(d) The surviving spouse, children, or parents, as the case may be, and as in this amendatory act hereinafter provided, of any Korean serviceman who died in line of duty while in such military service during either World War II or said Korean War, or who shall have died prior to payment under this section from any cause attributable to his military service, in line of duty, as shown by the records of the United States Veterans' Administration, shall be paid the amount to which such deceased serviceman would have been entitled had he received payment of said honorarium, or if such amount is less than five hundred dollars ($500.00), then such surviving spouse, children or parents, as the case may be, shall be paid the sum of five hundred dollars ($500.00), and no more;

(e) Provided that there shall be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in either of said Wars, no more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory; and provided further that no payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 3. That section 3 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment under this law, the amount specified in subsection (d) of section 2 of this amendatory act, shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to the child or children who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children, then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this paragraph provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person.

Section 4. That section 5 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 5. In the case of minors or incompetent persons, claims shall be filed by and payments made to his or her guardian, his or her custodian duly appointed by the Veterans' Administration, or his or her legal fiduciary.

Section 5. That section 12 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 12. For the purpose of providing for the payment of the honorarium, or adjusted compensation, herein provided for and for paying the expenses of administration of this law, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of twenty-two million dollars ($22,000,000.00) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner in this law provided; shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax in this law provided for and place the proceeds thereof in the War Veterans' Compensation Bond Retirement Fund, until all bonds issued hereunder, and the interest accruing thereon, shall have been paid; shall draw interest at the rate of not more than four and one-half per cent (4½%) per annum, payable semi-annually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity; whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds; and said board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and

a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semi-annually, which coupons shall be executed with facsimile signatures of all the members of said board of examiners, and the signing of such coupons with such facsimile signatures shall be recognized as sufficient execution of such coupons on behalf of the state of Montana. Provided, however, that if the moneys derived from said first issue of twenty-two million dollars ($22,000,000.00) of bonds as in this section above provided shall be insufficient to pay all claims heretofore filed with and heretofore or hereafter allowed by said board of examiners under the original provisions of said Initiative No. 54 as heretofore amended, and to pay all claims filed and allowed under this amendatory act, together with the expenses of administration of this amendatory act, there shall be issued and sold under the direction and supervision of the board of examiners of the state of Montana limited obligation bonds of the state of Montana in the further sum of six million dollars ($6,000,000.00) or in such sum within that amount as may be necessary for such purposes. The issuance of such bonds shall be made in the same manner and such bonds shall be subject to the same limitations, restrictions, and provisions as apply to said original issue of twenty-two million dollars ($22,000,000.00), except that such bonds shall draw not more than four and one-half per cent (4½%) interest and shall be payable only out of a cigarette tax as hereinafter provided in this amendatory act.

Section 6. That there is hereby added to said Initiative No. 54 a new section to be numbered section 14-A, to read as follows:

Section 14-A. The money arising from the sale of such said additional bonds in the amount of six million dollars ($6,000,000.00) in this amendatory act above-provided for as may be sold as herein provided shall be deposited in the state treasury to the credit of the special fund created by said Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in said fund, after payment of all claims heretofore filed with and heretofore or hereafter allowed by the board of examiners under the original provisions of said Initiative No. 54, shall, together with such additional funds as may be derived from the sale of bonds under the said issue of six million dollars ($6,000,000.00) authorized by this amendatory act, be used to pay said honorarium granted by subdivisions (b), (c), and (d) of section 2 hereof, and by section 3 of said Initiative No. 54 as hereby amended, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is hereby appropriated from the War Veterans' Compensation Fund, in addition to the appropriation made by section 14 of said Initiative No. 54 as originally enacted, the moneys now remaining in said fund and not needed for the payment of the honorarium to persons who served in World War II, and the sum of six million dollars ($6,000,000.00), or so much thereof as may be necessary to pay said honorarium to the persons who served in the military forces in said Korean War.

Section 7. That section 16 of said Initiative No. 54 be, and the same is hereby amended to read as follows:

Section 16. That in addition to the aggregate excise tax upon cigarettes now provided for by section 16 of said Initiative Measure No. 54, there is hereby imposed a tax of one cent (1¢) on each package of cigarettes containing not more than twenty (20) cigarettes, and when a package shall contain more than twenty (20) cigarettes, then one cent (1¢) for each twenty (20) or fraction of twenty (20) cigarettes in such package. Such additional tax shall be collected at the same time and in the same manner as the tax levied and imposed by subdivision (2) of said section 16 of said Initiative Measure No. 54. For the purpose of giving full legal effect to said increase of said excise tax, section 84-5606 of said Title 84 and section 84-5621 of said Title 84 are hereby amended so as to read as follows:

Section 84-5606. [See section as set out above.]

Section 84-5621. [See section 84-5621.]

Section 8. There is hereby added to said Initiative No. 54 a new section to be numbered section 17-A to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54, or of the interest thereon, but the provision made by said Initiative for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Except where such construction would conflict with express provisions of this amendatory act, said Initiative No. 54 shall be construed as though the amendments made hereby had formed a part of said Initiative at the time of its adoption on November 7, 1950. Nothing herein contained is to be construed as extending the time of filing claims under said Initiative No. 54 as originally adopted nor as amended by chapter 123 of the Laws of the Thirty-third Session of the

Montana Legislative Assembly, nor as authorizing any payments from said War Veterans' Compensation Fund except expenses of administration of said Initiative as hereby amended, of claims for the honorarium filed on or prior to January 1, 1954, and the expenses of administration in connection therewith, and of the payments provided for in subdivisions (b), (c) and (d), of section 2, and in sections 3 and 5, of said Initiative No. 54 as amended.

Section 10. Claims for benefits under the provisions of subdivisions (b), (c) and (d) of section 2 and/or under sections 3 and 5 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of three (3) years from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of three (3) years shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 11. If any provision contained in this amendatory act shall for any reason be held invalid, such decision shall not invalidate the remaining provisions of this act.

Section 12. All acts or parts of acts in conflict herewith are hereby repealed.

Section 13. This act will take effect and be in full force and effect from and after its passage and approval. Approved February 26, 1957.

Chapter 45, Laws 1957

An act to amend Initiative Measure No. 54 adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, as amended by chapter 123, Session Laws of 1953, relating to section 6 thereof, by providing a new date for applications for payment of the honorarium to be December 31, 1957, repealing all acts and parts of acts in conflict herewith, and containing an effective date.

Section 1. That section 6 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 6. All applications for the payment of the honorarium or adjusted compensation herein provided for shall be filed with the board of examiners before the thirty-first day of December, 1957: and the filing of an application with a county clerk and recorder of any county of this state shall be deemed, for the purposes of this section, to have been filed with said board as of the date of filing with such clerk and recorder. Upon receiving any such application such clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon such application, over his signature and seal, and immediately transmit such application to the said board of examiners. Any filing with such board or with any such clerk and recorder within the time limited by this section shall be effective to preserve the rights of the applicant though such application as so filed shall be defective, provided defects therein are later corrected under reasonable rules to be adopted by said board.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall be in full force and effect upon its passage and approval. Approved February 26, 1957.

84-5607. Affixing of insignia. Insignia shall be affixed to packages of cigarettes only by licensed distributors and dealers. Provided, however, the provisions of this act shall not apply to public warehouses acting as agents of manufacturers.

History: En. Sec. 7, Ch. 289, L. 1947; amd. Sec. 4, Ch. 18, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

84-5608. Insignia purchased at discount. Every licensed distributor and dealer will be entitled to purchase said insignia at a discount of eight per cent (8%) of their face value, upon payment therefor. This discount is not applicable to that portion of the tax collected for any veterans' honorarium.

History: En. Sec. 8, Ch. 289, L. 1947; amd. Sec. 5, Ch. 18, L. 1957; amd. Sec. 2, Ch. 222, L. 1957.

Compiler's Note.

This section was amended twice in the 1957 Session. Once by chapter 18 and

once by chapter 222. Neither law contained a specific effective date. Chapter 18 was signed by the Governor February 18 while chapter 222 was signed March 12. As the acts are not in conflict with each other the Compiler has made a composite section. For specific changes see Amendments below.

Amendments

The 1957 amendment by Ch. 18 substituted "dealer will" for "retailer shall" and "insignia" for "stamps" in the first sentence and added the second sentence.

The 1957 amendment by Ch. 222 made the same changes as the amendment by Ch. 18 and also decreased the discount from 10% to 8%.

Repealing Clause

Section 3 of Ch. 222, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-5609. Use of tax stamping meters. The board may authorize any manufacturer, distributor or dealer of cigarettes to use a tax stamping meter machine with which to place an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the board. Each individual package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax stamping meter machine and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any distributor or dealer licensed under this act. The board shall supervise and check the operation of such tax stamping meter machines. The operator of such machine, before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall collect from said operator the amount of money proper for said setting, less a discount of ten per cent (10%) on that portion of the tax not being collected for any veterans' honorarium. The county treasurer shall immediately report to the board on forms prescribed by it, the name of the operator and the number of packages for which said meter was set and shall immediately forward to the board the amount collected from said operator.

History: En. Sec. 9, Ch. 289, L. 1947; amd. Sec. 6, Ch. 18, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted "dealer" for "retailer" and deleted the words "in lieu of said stamps" which appeared at the end of this sentence; in the fifth sentence inserted the words "before using the same"; added the sixth sentence; in the seventh sentence substituted "shall immediately forward to the board the amount collected from said operator" for "the distributor or retailer, using such tax stamping meter machine, within ten (10) days from the first day of the month of the following month, shall remit to the board the amount of the tax due on the packages of cigarettes for which said tax stamping meter machine was set to stamp for the preceding month" and deleted a former last paragraph which read "That any distributor or retailer using such tax stamping meter machine shall be required to furnish a surety bond, to be approved by the board, in the sum of five thousand dollars ($5,000.00) conditioned for the payment of the tax due on packages of cigarettes stamped by said tax stamping meter machines."

Separability Clause

Section 7 of Ch. 18, Laws 1957 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 8 of Ch. 18, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-5621. Clerical and field assistants. The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly

administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606 of the Montana Revised Codes of 1947, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a special fund known as the War Veterans' Compensation Bond Retirement Fund, which fund shall be kept segregated from all money in the state treasury and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All moneys derived from such additional tax shall be paid to the state treasurer and credited to a special trust fund to be known as the War Veterans' Compensation Bond Retirement Fund, which shall be kept segregated from all money in the state treasury and shall, while any of the bonds herein authorized or any interest thereon remain unpaid, be available solely for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a special fund to be known as the War Veterans' Compensation Bond Retirement Fund No. 2, which fund shall be kept segregated from all other money in the state treasury and shall, while any of the bonds hereafter issued and sold, in addition to the twenty-two million dollars ($22,000,000.00) authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

History: En. Sec. 21, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 7, Ch. 44, L. 1957.

Amendment

The 1957 amendment added the third paragraph.

REVISED CODES OF MONTANA

VOLUME 6

1957 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

Edited by

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

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For index see pocket supplement to Volume 9

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Cited in Gray v. Corcoran, 127 M 572, 269 P 2d 1091, 1094.

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86-602. (7921) **Not revocable.**

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Section 86-701. Contract for prearranged funeral plan—trust created.
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86-704. Penalty.

86-701. Contract for prearranged funeral plan—trust created. In all cases when, prior to his death, a person, or some one in his behalf, makes a contract for the final disposition of his body, under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the professional services of a funeral director or embalmer will then be furnished, all money paid under such contract shall

be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party. Accruals of interest upon this money are subject to this same trust.

History: En. Sec. 1, Ch. 232, L. 1953.

Title of Act

An act relating to the sale of personal property or services under prearranged funeral plans; requiring the proceeds thereof to be held in trust for the puposes intended; providing penalties for violations, and fixing the effective date of this act.

86-702. Deposit of money in trust—how deposited. Within thirty (30) days after receipt the party to the contract holding said money in trust, according to section 1 [86-701], shall deposit said money in a banking institution, or invest said money in the stock of a savings or building and loan association, organized under the laws of the state of Montana or of the United States of America and having its principal place of business in the state of Montana, the deposits of which banking institution or the stock liability of which savings or building and loan association are insured by an instrumentality of the federal government. Said deposits or investments shall be and constitute a trust fund for the benefit of the person who has contracted for such property and services upon his death. Such money shall be deposited in a separate account in the name of the depositor as trustee for the person who has contracted for such property and services upon his death.

History: En. Sec. 2, Ch. 232, L. 1953.

86-703. Report of institution holding deposited money. Any banking institution, or savings or building and loan association, receiving money in trust under the provisions of section 2 [86-702] of this act, shall report to the superintendent of banks of the state of Montana, on or before the first day of February of each year, all amounts received and held in trust. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining and the interest or dividends paid on each such account.

History: En. Sec. 3, Ch. 232, L. 1953.

86-704. Penalty. Any person wilfully violating the provisions of section 2 [86-702] of this act shall be guilty of a misdemeanor and upon conviction therefor shall be punished as provided in section 94-116, Revised Codes of Montana, 1947.

History: En. Sec. 4, Ch. 232, L. 1953.

Effective Date

Section 5 of Ch. 232 provided the act should be in effect from and after its passage and approval. Approved March 6, 1953.

TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-103 to 87-107, 87-109, 87-111 to 87-113, 87-117, 87-126, 87-128, 87-130, 87-133, 87-134, 87-138, 87-145, 87-146, 87-148, 87-149.

CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

Section 87-103. Benefits.
87-104. Duration of benefits.
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87-109. Contributions.
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87-103. Benefits. (a) Payment of benefits. Thirty (30) months after the date when contributions first accrue under this act from the employer, benefits shall become payable from the fund to any individual, who thereafter is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the railroad unemployment insurance act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act with respect to any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable on the basis of such wages under any provisions of this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the commission, in accordance with such rules and regulations as the commission may prescribe.

(b) Weekly benefit amount. Except as provided in [sub]section (c), an insured worker's weekly benefit amount shall be the amount in column B of the benefit schedule of this subsection on the line on which in column A there appears his total wages paid for insured work in that quarter of his base period in which his wages were highest: (designated in the benefit schedule as "High-quarter Wages").

Benefit Schedule

Weekly benefit amount figures from weighted schedule of high-quarter wages and qualifying wages computed as one and one-half times high-quarter wages and maximum potential benefits in benefit year.

High-Quarter Wages (Column A)	Weekly Benefit Amount (Column B)	Minimum Qualifying Wages (Column C)	Maximum Total Benefits (at 22 weeks) (Column D)
$170.00-189.99	$10.00	$255.00	$220.00
190.00-209.99	11.00	285.00	242.00
210.00-234.99	12.00	315.00	264.00
235.00-259.99	13.00	352.50	286.00
260.00-284.99	14.00	390.00	308.00
285.00-309.99	15.00	427.50	330.00
310.00-334.99	16.00	465.00	352.00
335.00-359.99	17.00	502.50	374.00
360.00-384.99	18.00	540.00	396.00
385.00-409.99	19.00	577.50	418.00
410.00-434.99	20.00	615.00	440.00
435.00-459.99	21.00	652.50	462.00
460.00-484.99	22.00	690.00	484.00
485.00-509.99	23.00	727.50	506.00
510.00-534.99	24.00	765.00	528.00
535.00-559.99	25.00	802.50	550.00
560.00-584.99	26.00	840.00	572.00
585.00-609.99	27.00	877.50	594.00
610.00-634.99	28.00	915.00	616.00
635.00-659.99	29.00	952.50	638.00
660.00-684.99	30.00	990.00	660.00
685.00-709.99	31.00	1,027.50	682.00
710.00 or more	32.00	1,065.00	704.00

Such benefit shall be not more than thirty-two dollars ($32.00) per week nor less than ten dollars ($10.00) per week.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in his base period totaling not less than the amount in column C of the benefit schedule in subsection (b) on the line on which in column B there appears his weekly benefit amount; provided, that if any individual during his base period has not been paid such an amount but has been paid wages totaling not less than an amount appearing in column C, he can qualify as an insured worker and his benefit amount shall be the amount appearing in column B opposite the minimum qualifying wage which he has received.

(d) Wage record. The commission shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(e) Benefits. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse, or if

there be no surviving spouse, then to the surviving children, or if there be no surviving children, then to the next of kin, without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957.

Compiler's Notes

The railroad unemployment insurance act referred to in this section is Ch. 680, 52 Stat. 1094 and the section containing definitions is sec. 1 compiled in the United States Code as Tit. 45, sec. 351.

Section 8 of Ch. 191, Laws 1953 provided the act should be in effect from and after the date of its passage and approval (March 4, 1953) and that it should apply to the benefit payments under this section as of April 1, 1953.

Section 6 of Ch. 238, Laws 1955 read "This act shall be in full force and effect from and after April 1, 1955, and section 1 shall apply to all benefit years beginning after April 1, 1955, and the insured status of all claimants who have a benefit year current on or after April 1, 1955, shall be redetermined and benefits shall be paid in accordance with this provision provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision."

Amendments

The 1949 amendment amended subsection (b) by raising the maximum payment from eighteen to twenty dollars per week.

The 1953 amendment completely rewrote subsection (b). Formerly it read: "Weekly Benefit Amount for Total Unemployment. Each eligible individual, who is totally unemployed (as defined in this act), in any week, shall be paid with respect to such week, benefits at the rate of four and one-half per centum (4½%) of his total wages in employment for employers in the quarter of his base period wherein his earnings were highest, if a multiple of a dollar, or computed to the next highest multiple of a dollar, but not more than twenty dollars ($20.00) per week, nor less than seven dollars ($7.00) per week"; added a new subsection (c) and changed former subsection (c) to (d).

The 1955 amendment raised all of the figures in column B by $3.00; raised all of the figures in column D by $60; increased the maximum and minimum weekly benefit from $23 and $7 to $26 and $10 respectively, and added subdivision (e).

The 1957 amendment in the Benefit Schedule increased the maximum weeks for benefits from 20 to 22, increased the maximum weekly benefit from $26 to $32 and made numerous changes in the columns; in subsec. (c) deleted the words "and such wages must have been paid in at least two quarters of his base period:" which appeared before the word "provided" and also deleted "on a line not more than three lines above" which appeared after "column C."

Vested right of applicant for unemployment compensation in mode and manner of computing benefits in effect at time of his discharge or loss of employment. 20 ALR 2d 963.

What constitutes a "part time worker" school student excluded from coverage of unemployment compensation or insurance act. 31 ALR 2d 495.

87-104. Duration of benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed twenty-two (22) times his weekly benefit amount.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957.

Amendments

The 1949 amendment substituted "eighteen" for "sixteen."

The 1953 amendment substituted "twenty (20)" for "eighteen (18)."

The 1957 amendment substituted "twenty-two (22)" for "twenty (20)."

Separability of Provisions

Section 2 of Ch. 178, L. 1949 read: "If any clause, sentence, section, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clauses

Section 3 of Ch. 178, Laws 1949 and Sec. 4 of Ch. 140, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 178, L. 1949 read: "This act shall be in full force and effect from and after the date of its passage and approval and shall apply as to benefit payments under Section 1 of this act as of March 31, 1949." Approved March 3, 1949.

Effective Date and Application

Section 5 of Ch. 140, Laws 1957 read "This act shall be in full force and effect from and after April 1, 1957, and section 1 shall apply to all benefit years beginning after April 1, 1957, and the insured status of all claimants who have a benefit year current on or after April 1, 1957, shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision."

87-105. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe, except that the commission may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 87-107 (a).

(c) He is able to work and is available for work and is seeking work, provided, however, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957.

Amendments

The 1953 amendment deleted subsection (e) which read: "He has within the base period earned wages for employment by employers equal to thirty (30) times his weekly benefit amount."

The 1955 amendment in the first sentence of subdivision (d) substituted "one (1) week" for "two (2) weeks" and added the second sentence in that subdivision.

The 1957 amendment substituted the words "for any week of total unemployment within his benefit year;" for the words "with respect to any week" in the first paragraph and deleted a former subd. (d) which read "(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of one (1) week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits, in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year, but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week shall be counted as a week of total unemployment for the purposes of this subsection:

"(1) If the benefits have been paid with respect thereto;

"(2) Unless the individual was eligible for benefits with respect thereto;

"(3) Unless it occurs within the benefit year of the claimant;

"(4) Unless it occurs after benefits first could become payable to any individual under this act."

Outside pieceworkers as within Unemployment Compensation Act. 1 ALR 2d 555.

Unemployment compensation benefits where, during the base year, employee worked in different states for same employer. 9 ALR 2d 646.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 ALR 2d 369.

Seasonal employees as entitled to unemployment compensation. 24 ALR 2d 1400.

Severance payments as affecting right to unemployment compensation. 25 ALR 2d 1070.

87-106. Disqualification for benefits. An individual shall be disqualified for benefits—

(a) If he has left work, without good cause, for a period of not less than one (1) or more than four (4) weeks, as determined by the commission according to the circumstances in each case. No benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against the employer (whose employment the individual left) on account of that particular employment, unless and until the commission shall determine (upon hearing and after at least ten (10) days' written notice thereof to said employer) that the individual left work for good cause based solely upon objectionable conditions or terms of the employment and attributable entirely to the employer.

(b) If he has been discharged for misconduct connected with his work, for a period of not less than one (1) nor more than four (4) weeks as determined by the commission in each case according to the seriousness of the misconduct. No benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against the employer (from whose employment the individual was discharged for misconduct as above provided) on account of that particular employment, unless and until the commission shall determine (upon hearing and after at least ten (10) days' written notice thereof to the said employer) that the individual was not guilty of misconduct as above provided, or that his discharge was not for that reason.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the commission or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the one (1) nor more than the four (4) weeks which immediately follow such week as determined by the commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the commission, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for total disability under the workmen's compensation law of this, or, any state or under a similar law of the United States;

(3) Benefits under the railroad unemployment insurance act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

(f) During the school term or customary vacation periods within the school term, if claimant has left his most recent work for the purpose of attending an established educational institution, or if claimant is a student regularly attending an established educational institution.

(g) For any week wherein claimant leaves her most recent work to be married. Such disqualification shall continue until such time as said claimant shall have obtained bona fide employment after such marriage. No benefit payments or amounts thereafter paid such claimant shall ever be charged under section 87-109 against employer whose employment the claimant left to be married.

(h) Where retired and entitled to receive retirement compensation paid in whole or in part from funds furnished by an employing unit, such disqualification to be applied as follows: all wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 or 87-105, and no benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against any employing unit from whose employment the individual is retired, on account of that particular employment, unless and until the commission shall determine (upon hearing had after at least ten (10) days' written notice thereof to said employer) that the individual was not retired by the employer acting in good faith. This disqualification does not extend to the reecipt of old age benefits under the federal social security act, as amended, or benefits under the federal old age and survivors' insurance act, or similar payments under any act of congress or state law.

(i) For any week wherein claimant leaves her most recent work during pregnancy, and due to such pregnancy. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, for any week wherein claimant leaves her most recent employment following childbirth, a claimant within the first two (2) months following such childbirth, to establish eligibility, must present evidence of her physical ability to work at such employment. In either of the cases set forth hereinbefore, such evidence of eligibility must be in the form of a certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957.

Amendments

The 1953 amendment in subsection (a) deleted the words "without good cause, if so found by the commission" which appeared after the word "voluntarily" in the first sentence and added the second sentence; in subsection (b) substituted the words "or affecting his employment" for "if so found by the commission" in the first sentence and added the second sentence; in subsection (c) substituted "If he failed" for "If the commission finds that he has failed," deleted the word "suitable" which appeared before the word "work" in the first sentence and inserted the phrase "offered to him which he is physically able and mentally qualified to perform"; deleted former subdivision (3) of subsection (e) which read: "Old age benefit payments under Title II of the social security act, as amended, or benefits under the federal old age and survivors' insurance act, or similar payments under any act of congress or state law" and added subsections (h), (i) and (j).

The 1955 amendment in subd. (a) inserted the words "without good cause attributable to the employment"; in subd. (e)(2) deleted the words "temporary or" which appeared before the words "total disability"; in subd. (g) substituted the second and third sentences for a sentence which read "Such disqualification shall continue until such time as subsequently to such week additional wage credits in employment for employers shall have been earned so as to be eligible for benefits

under section 87-105"; numerous changes were made in subds. (h) and (i), before 1955 amendment they read "(h) Where retired and receiving retirement compensation from benefits chargeable against the employer from whose employment he was retired, all wages earned by such individual in employment from which he has been regularly retired shall not be considered or included in determining his wage credits or weekly benefit amount or aggregate earnings under section 87-103, as amended, and 87-105 and no benefit payments or amounts thereafter paid such individual shall ever be charged under section 87-109 against the employer (from whose employment the individual was regularly retired) on account of that particular employment, unless and until the commission shall determine (upon hearing had after at least ten (10) days written notice thereof to said employer) that the individual was not regularly retired by the employer acting in good faith. (i) For any week wherein claimant leaves her most recent work to change her place of residence in order to remain with her husband or family. Such disqualification shall continue until such time as subsequently to such week additional wage credits shall have been earned so as to be eligible for benefits under section 87-105."

The 1957 amendment in the first sentence of subd. (a) deleted the word "voluntarily" which appeared after the word "work," deleted the words "attributable to the employment" which appeared after the word "cause," substituted "four (4) weeks" for "five (5) weeks" and deleted the words "(in addition to and immediately following the waiting period)" which appeared after the words "four (4) weeks"; in the second sentence deleted the word "voluntarily" both times it appeared after the word "individual"; in subd. (b) in the first sentence deleted the words "or affecting his employment" which appeared after the word "work," substituted "four (4) weeks" for "nine (9) weeks" and deleted the words "(in addition to and immediately following the waiting period)" which appeared after the words "four (4) weeks"; in subd. (c) in the first sentence inserted the words "and suitable" and "suitable," in the second sentence substituted "four (4) weeks" for "five (5) weeks" and deleted the words "(in addition to the waiting period)" which appeared between the words "week" and "as"; in subd. (d)(2) in the provided further clause substituted "wherein the labor dispute occurs" for "of Montana"; in subd. (e)(3) added the second sentence; in subd. (h) inserted the words "such disqualification to be applied as follows:" deleted former subd. (i) which read "(i) For any week wherein claimant leaves her most recent work to change her place of residence in order to remain with her husband or children. Such disqualification shall continue until such time as said claimant shall have obtained bona fide employment in her new place of residence. No benefit payments or amounts thereafter paid shall ever be charged under section 87-109 against the employer whose employment the claimant left in order to remain with her husband or children" and relettered former subd. (j) as present subd. (i).

Right of unemployment compensation for period when plant was shut down for vacations. 8 ALR 2d 433.

Unemployment compensation as affected by employee's or employer's removal from place of employment. 13 ALR 2d 874.

Leaving employment, or unavailability for particular job or duties, because of sickness or disability, as affecting right to unemployment compensation. 14 ALR 2d 1308.

Construction and application of provision of unemployment compensation acts regarding disqualification for benefits because of labor disputes or strikes. 28 ALR 2d 287.

Right to unemployment compensation as affected by vacation or holiday or payment in lieu thereof. 30 ALR 2d 266.

Right to unemployment compensation of retired employee receiving pension or the like. 32 ALR 2d 901.

87-107. Claims for benefits. (a) Filing. Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

(b) Initial determination. A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either deter-

mine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 87-106 (d), the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period under dispute prior to the final decision of the commission, shall be paid only after such decision. Provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten (10) days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal tribunals. To hear and decide disputed claims, the commission shall appoint such impartial appeal tribunals as are necessary for the proper administration of this act, consisting in each case of either a salaried examiner selected in accordance with section 87-123, or a body consisting of three (3) members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; each of the latter two (2) members shall serve at the pleasure of the commission and be paid a fee of not more than ten dollars ($10.00) per day of active service on such tribunal plus necessary expense. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission

may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Commission review. The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The commission shall promptly notify the interested parties of its findings and decision.

History: En. Sec. 6(a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957.

Amendment

The 1957 amendment inserted the words "under dispute" in the fifth sentence of subd. (b).

87-108. Procedure and appeals.

Exhaustion of administrative remedies as prerequisite to declaratory relief in respect to unemployment compensation. 14 ALR 2d 838.

87-109. Contributions. (a) Payment. (1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half (½) cent or more, in which case it shall be increased to one (1) cent.

(b) Rate of contribution. (1) Each employer shall pay contributions equal to the following percentages of wages, as defined in section 87-149 (c) paid by him with respect to employment:

(A) One and eight-tenths (1.8) per centum with respect to employment during the calendar year 1937;

(B) Two and seven-tenths (2.7) per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941, and for each calendar year thereafter, except as herein provided in subsection (c) of this section.

(c) Experience rating. The commission shall for the calendar year 1947, and for each calendar year thereafter, classify employers in accordance with their actual contribution and unemployment experience and shall determine for each employer the rate of contribution which shall

apply to him throughout the calendar year in order to reflect said experience and classification.

The commission shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the commission shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in taxable payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30th of the preceding calendar year.

The rates for the calendar year 1953 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equalling approximately one and two-tenths (1.2) per centum of the total of all such payrolls.

The commission shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be two and seven-tenths (2.7) per centum unless and until there have been five (5) years prior to the computation date throughout which the employer has paid contributions at the rate of two and seven-tenths (2.7) per centum.

(2) The classified contribution rates for the calendar year 1947, and thereafter, except as hereinafter provided, shall be: one (1.0) per centum, one and one-half (1.5) per centum, two (2.0) per centum, two and one-half (2.5) per centum, and two and seven-tenths (2.7) per centum. The classified contribution rate for the calendar year 1953, and thereafter, except as hereinafter provided, shall be: five-tenths (.5) of one per centum, seven-tenths (.7) of one per centum, nine-tenths (.9) of one per centum, one and one-tenth (1.1) per centum, one and three-tenths (1.3) per centum, one and five-tenths (1.5) per centum, one and seven-tenths (1.7) per centum, one and nine-tenths (1.9) per centum, two and one-tenth (2.1) per centum, two and three-tenths (2.3) per centum, two and five-tenths (2.5) per centum, and two and seven-tenths (2.7) per centum.

(3) No employer shall be assigned a classified contribution rate higher than the second classified rate above the rate which was assigned to him for the last preceding calendar year except as hereinafter provided.

(4) No employer's rate shall be fixed below two and seven-tenths (2.7) per centum whose benefit payments charged as most recent employer have, in the last three (3) years preceding the computation date, exceeded the amount of his contributions for those years, provided that for the calendar year 1957 and thereafter, any employer may, for the purpose of avoiding the provisions of this subsection, have the option of making a voluntary contribution to the unemployment compensation fund to cancel the amount by which the benefit payments charged to him under section 87-109 (c) during the last three (3) completed fiscal years exceed his contributions

for the same three (3) years. Such voluntary contribution shall be applied first to cancel the amount by which benefits exceed contributions in the earliest of the three (3) years preceding the computation date, any remaining to cancel the excess in the second earliest year preceding the computation date, and any further remaining to cancel the excess in the most recent year preceding the computation date. Whenever the benefit payments charged to an eligible employer in the last three (3) fiscal years exceed his contributions for the same period, the commission shall notify him of the amount of such excess and the rate which would be applicable to him for the ensuing calendar year, if he exercises the option. Such employer must exercise the option of making the voluntary contribution allowed by this section within thirty (30) days after receipt of such notice; otherwise his rate for the ensuing calendar year shall be fixed at two and seven-tenths (2.7) per centum.

(5) Rates as fixed by the commission shall stand and be in effect unless and until the cash reserves in the unemployment compensation trust fund at any time in the future fall below twenty-eight million dollars ($28,000,000.00), then the contribution rate of all employers subject to this act shall immediately return to a uniform rate of two and seven-tenths (2.7) per centum, and shall continue at the two and seven-tenths (2.7) per centum rate until cash reserves in the unemployment compensation trust fund exceed thirty-two million dollars ($32,000,000.00).

(6) The commission shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, benefit experience and ratings to the successor employing unit or units.

(7) The commission shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the commission for a redetermination or hearing thereon within thirty (30) days after receipt of such notice. The provisions of section 87-107 applicable to appeals under claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redeterminations of classifications and rates of contribution filed by employers hereunder.

(8) "Annual taxable payroll" means the total of the four (4) quarters of taxable payrolls of an employer preceding the computation date as fixed herein.

(d) Wages in excess of three thousand dollars ($3,000.00). Commencing January 1, 1941, the provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars ($3,000.00) by an employer to an employee with respect to employment during any calendar year.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957.

Amendments

The 1953 amendment made numerous changes in this section. For section prior to amendment see parent volume.

The 1955 amendment reorganized the subsection lettering.

The 1957 amendment in subd. (c), third paragraph, substituted "three (3) years prior to computation date" for "three (3) preceding calendar years"; in subd. (c) (1) substituted "five (5) years prior to the computation date" for "five calendar years"; in subd. (c)(4) deleted the word "average" which appeared twice, before the word "benefit" and before the word "amount," substituted "three (3) years preceding the computation date" for "three (3) preceding calendar years" and added all that portion of this subsection beginning with the proviso clause, and in subd. (c)(5) increased the minimum and maximum reserves from $18,000,000.00 and $22,000,000.00 to $28,000,000.00 and $32,000,000.00.

Separability Clause

Section 6 of Ch. 191, Laws 1953 read: "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clause

Section 7 of Ch. 191, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 191, Laws 1953 provided the act should be in effect from and after the date of its passage and approval and should apply to the benefit payments under section 1 [87-103] of this act as of April 1, 1953. Approved March 4, 1953.

Construction

This statute lends itself to the specific subject of experience ratings, while section 87-138 is general in scope, hence where an employer did not avail himself of the right to file a written request for a redetermination of classification within 30 days after receipt of such notice, such notice was final and the employer could not then make application for an adjustment under section 87-138. Where one statute deals with a subject in general and comprehensive terms and another in a more minute and definite way, the two should be read together if possible but to the extent of any repugnancy between them the special will prevail over the general statute. Wymont Tractor & Equipment Co. v. Unemployment Compensation Comm., — M —, 278 P 2d 208, 210.

Unemployment compensation: right of successor in business to experience or rating of predecessor for purpose of fixing rate of contributions. 22 ALR 2d 673.

87-110. Period, election and termination of employer's coverage.

Constitutionality, construction and application of provision of Unemployment Compensation Act subjecting to its provisions an employer purchasing or succeeding to the business of another employer. 4 ALR 2d 721.

87-111. Unemployment compensation fund. Establishment and control. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109 (c) (4); (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of moneys belonging to the fund; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended. All moneys in the fund shall be mingled and undivided.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957.

Amendment

The 1957 amendment inserted the words "inclusive of voluntary contributions as provided in section 87-109 (c) (4)" in (1) of the second sentence and added (5).

87-112. Accounts and deposits. The state treasurer shall be ex officio the treasurer and custodian of the fund who shall administer such fund in

accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to sections 87-135 to 87-139 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957.

Amendment

The 1957 amendment inserted the words "for the payment of benefits" in the sixth sentence.

87-113. Withdrawals. (a) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, may also be withdrawn for the payment of expenses for the administration of this act and of public employment offices, as provided by this act. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such

sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 87-112.

(b) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this act pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be expended to a period ending not more than two (2) years after the date of the enactment of the appropriation law, and (C) limits the amount which may be used during any twelve (12) month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (1) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve (12) month period and the four (4) preceding twelve (12) month periods, exceeds (2) the aggregate of the amounts used pursuant to this subsection and charged against the amounts credited to the account of this state during any of such five (5) twelve (12) month periods. For the purposes of this subsection, amounts used during any such twelve (12) month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount used for administration during any such twelve (12) month period may be charged against any amount credited during such a twelve (12) month period earlier than the fourth preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this subsection shall be deposited in the unemployment compensation administration fund, but until expended, shall remain a part of the unemployment compensation fund. The commission shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(c) All warrants issued by the treasurer for payment pursuant to this section shall bear the signature of the treasurer and the counter signature of a member of the commission or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957.

Amendment

The 1957 amendment divided this section into subdivisions (a), (b) and (c); in subd. (a) added the exception clause to the first sentence; added new material for subd. (b) and in subd. (c) which was formerly the fifth sentence of subd. (a) substituted "pursuant to this section" for "of benefits and refunds."

87-117. Unemployment compensation commission—organization. There is hereby created a commission to be known as the Unemployment Compensation Commission of Montana. The commission shall consist of three (3) members who shall be appointed by the governor by and with the advice and consent of the senate. Two (2) of the members of the commission shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They shall serve on a per diem basis and shall be paid at the rate of ten dollars ($10.00) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one (1) year for each of said two (2) members shall not exceed the sum of five hundred dollars ($500.00). The third member of the commission, who shall be designated as chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission, no member shall serve as an officer or committee member of any political party organization. The governor may, at any time, after notice and hearing, remove any commissioner for neglect of duty, malfeasance, misfeasance or nonfeasance in office.

History: En. Subd. (a), Sec. 10, Ch. 137, L. 1937; amd. Sec. 1, Ch. 102, L. 1953.

Amendment

The 1953 amendment substituted the words "by and with the advice and consent of the senate" for the words "on a nonpartisan merit basis within sixty days after the passage of this act and after any vacancy occurs in its membership" in the first sentence; inserted the words "shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They" after the words "Two (2) of the members of the commission" in the second sentence; deleted a sentence which read "Each per diem member shall hold office for a term of six years, except that (1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the member first taking office after the date of enactment of this act shall expire, as designated by the governor at the time of appointment, one at the end of three years, the other at the end of six years" and deleted the word "inefficiency" which appeared after the words "commissioner for" in the last sentence.

Repealing Clause

Section 2 of Ch. 102, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 102, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

Removal of Third Member

The term of office of the third member of the commission who is the executive director is not fixed by law and therefore he holds office at the pleasure of the governor and may be removed without hearing. State ex rel. Bonner v. District Court, 122 M 464, 484, 206 P 2d 166, 175.

The provisions of this section with respect to removal of members of the commission by the governor do not limit the power of the governor with respect to removal of the third member of the commission. State ex rel. Bonner v. District Court, 122 M 464, 484, 206 P 2d 166, 171.

87-120. Administration—duties and powers of commission.

References

Cited or applied in State ex rel. Bonner v. District Court, 122 M 464, 484, 206 P 2d 166.

87-126. Subpoenas. In case of contumacy by, or refusal of any person, to obey a subpoena issued to such person, as set forth in section 87-125,

thereupon a commissioner, the commission, the chairman of an appeal tribunal, or any duly authorized representative of any of them, may make application to any court of this state within the jurisdiction of which the particular inquiry is carried on, or within the jurisdiction of which said person charged with contumacy, or refusal to obey, is found, or resides, or conducts business, and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the chairman of an appeal tribunal, a commissioner, the commission, or any duly authorized representative of any of them there to produce evidence if so ordered or there to give testimony touching the matters under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the commission, the chairman of an appeal tribunal or any duly authorized representative of any of them shall be punished by a fine of not more than two hundred ($200.00) dollars or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Subd. (g), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1955.

Amendment

The 1955 amendment substituted the words "In case of contumacy by, or refusal of any person * * * and such court shall have jurisdiction" for the words "In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal, the commission or any duly authorized representative of any of them shall have jurisdiction."

87-128. State-federal cooperation. In the administration of this act, the commission shall cooperate to the fullest extent consistent with the provisions of this act, with the secretary of labor, pursuant to the provisions of the social security act, as amended; shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under title III of the social security act, as amended, for the purpose of assisting in the administration of this act.

Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957.

Amendment

The 1957 amendment substituted "secretary of labor, pursuant to the provisions of the social security act, as amended" for "social security board, created by the social security act, approved August 14, 1935, as amended" and thereafter wherever appearing in said section substituted "secretary of labor" for "social security board."

87-130. Acquisition of property, etc. Subject to the approval of the state board of examiners, the commission may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana. Subject to the approval of the state board of examiners, the commission may sell any equipment, supplies or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment compensation administration fund. In the event the duties, or any part thereof, of the commission shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the commission, with the approval of the state board of examiners, may lease such equipment and real property to the federal government, or such agency, but the title thereto shall remain in the state of Montana.

History: En. Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957.

Amendment

The 1957 amendment added the third sentence.

87-133. Unemployment compensation administration fund — special fund. There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited, appropriated or paid into this fund are hereby appropriated and made available to the commission. All moneys in the fund shall be expended solely for the purpose of defraying the costs of administration of this act and costs of administration of such other legislation as shall be specifically delegated to the commission for administration by the legislature. All moneys received and deposited in said fund for administration expense from the United States of America or any agency thereof, pursuant to section 302, title III of the social security act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this act. The fund shall consist of (1) all moneys received from the United States of America or any agency thereof, pursuant to section 302, title III of the social security act, as amended, and (2) all moneys appropriated by the state from the general fund for the purpose of administering this act, all interest and penalties collected on past due contributions as provided by section 87-135; all moneys, trust funds, supplies, facilities or services furnished, deposited, paid and received from the United States of America, or any agency thereof, from this state or any agency thereof, from any other state or any of its agencies, from political subdivisions of the state, or any other source for administrative expense and purpose. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 87-113 shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in section 87-113. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balance in this fund shall not lapse at any time, but shall be continuously available to the commission for the expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection

with the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment compensation fund under section 87-112, shall be paid from the moneys in the unemployment compensation administration fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957.

Amendments

The 1955 amendment substituted "United States of America, or any agency thereof" for "social security board, or its successor" both times it appears and "secretary of labor" for "social security board."

The 1957 amendment added the sixth sentence.

87-134. Reimbursement of fund. This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of any of the moneys received after July 1, 1941, from the United States of America, or any agency thereof, under title III of the social security act, any unencumbered balances in the unemployment compensation administration fund as of that date, any moneys thereafter granted to this state pursuant to the provisions of the Wagner-Peyser act, and any moneys made available by the state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of this act. Such moneys shall be promptly supplied by moneys furnished by the state of Montana or any of its subdivisions for the use of the unemployment compensation commission and used only for purposes approved by the secretary of labor. The commission shall, if necessary, promptly report to the governor and the governor to the legislature, the amount required for such replacement. This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the social security act.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955.

Amendment

The 1955 amendment inserted the words "of the" before the words "moneys received after July 1, 1941" and substituted the words "United States of America, or any agency thereof" for "social security board" and "secretary of labor" for "social security board" each time it appears.

87-135. Penalty and interest on past due contributions.

Construction, application, and effect, with respect to social security and unemployment compensation taxes, of statutes imposing penalties for tax evasion or default. 7 ALR 2d 1074.

87-138. Refunds. If not later than three (3) years after the date on which any contributions or interest thereon became due, or not later than one (1) year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjust-

ment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commission shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commission's own initiative. If the commission shall determine that an employer has paid contributions to this state under this act, when such contributions should have been paid to another state, under a similar act of such other state, transfer of such contributions to such other state shall be made upon discovery, or upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time. In the event that this act is not certified by the secretary of labor under section 1603 of the internal revenue code, as amended, 1939, for any year, then and in that event, refunds shall be made of all contributions required under this act from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957.

Amendments

The 1955 amendment substituted "secretary of labor" for "social security board."

The 1957 amendment inserted the words "or not later than one (1) year from the date on which payment was made, whichever is later" in the first sentence and added the third sentence.

Construction

This section is general in scope while section 87-109 lends itself to the specific subject of experience ratings and where one statute deals with a subject in general and comprehensive terms and another in a more minute and definite way, the two should be read together if possible but to the extent of any repugnancy between them the special will prevail over the general statute. Hence, an employer could not make application for an adjustment under this section where he did not avail himself of the right to file a written request for a redetermination of classification within 30 days after receipt of such notice as provided for by section 87-109. Wymont Tractor & Equipment Co. v. Unemployment Compensation Comm., — M —, 278 P 2d 208, 210.

87-145. Penalties—falsity or wilful nondisclosure—violations by employer or agent—violation of act by regulations—wrongfully collecting benefits. (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, or under an employment security law of any other state, or territory or the federal government either for himself or for any other person, shall be punished by a fine of not less than twenty-five ($25.00) dollars nor more than five hundred ($500.00) dollars or by imprisonment for not longer than thirty (30) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any

contribution or other payment required from an employing unit under this act, or under the employment security law of any other state, or territory or the federal government or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty-five ($25.00) dollars nor more than five hundred ($500.00) dollars or by imprisonment for not longer than sixty (60) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty-five ($25.00) dollars nor more than five hundred ($500.00) dollars or by imprisonment for not longer than sixty (60) days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this act for the collection of past due contributions. Action for collection of overpaid benefits shall be brought within five (5) years after the date of such overpayment, otherwise to be barred as provided in section 93-2604.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955.

Amendments

The 1951 amendment inserted the words "or under an employment security law of any other state, or territory or the federal government" in subsections (a) and (b), inserted the words "less than $25 nor" in subsections (a), (b) and (c), and raised the maximum term of imprisonment in subsection (a) from 30 days to 60 days.

The 1955 amendment in subd. (a) lowered the maximum term of imprisonment from 60 to 30 days and in subd. (d) added the last sentence.

Separability of Provisions

Section 2 of Ch. 150, L. 1951 read: "If any clause, sentence, section, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clause

Section 3 of Ch. 150, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 150, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Repayment of unemployment compensation benefits erroneously paid. 5 ALR 2d 860.

87-146. Representation in court. (a) In any civil action to enforce the provisions of this act the commission and the state may be represented by any qualified attorney who is employed by the commission and is designated by it for this purpose or at the commission's request, by the attorney general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of the county wherein the crime was committed.

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955.

Amendment

The 1955 amendment in subd. (b) substituted the words "of the county wherein the crime was committed" for the words "of any county in which the employer has a place of business or the violator resides."

87-148. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of an employer for the last three (3) or five (5) preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year.

(e) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(f) "Commission" means the unemployment compensation commission established by this act.

(g) "Contribution" means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January

1, 1936, had in its employ one (1) or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit which for some portion of a day in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, has or had in employment, one or more individuals (irrespective of whether the same individuals are or were employed in each such day); or whose total annual payroll within either the current or the preceding calendar year, exceeds the sum of five hundred dollars ($500.00);

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this [sub]section;

(4) Any employing unit which, having become an employer under paragraph (1), (2) or (3) has not, under section 87-110, ceased to be an employer subject to this act; or

(5) For the effective period of its election pursuant to section 87-110 (c) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (I) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

(A) Agricultural labor; The term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity commonly known as agricultural commodities, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used ex-

clusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(5) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;

(E) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or wild life and anglers' clubs or associations, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(F) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(G) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;

(H) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall be-

come effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this act;

(I) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the commission may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

(m) "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957.

Amendments

The 1953 amendment in subsection (j)(6)(A) defined "agricultural labor" and "farm" by adding (1) to (5) thereunder.

The 1955 amendment in subd. (e) deleted the words "excluding however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe" which appeared after "December 31" and in subd. (j)(3) inserted the word "be" the last time it appears.

The 1957 amendment in subd. (d) substituted "first day of the calendar week in which such individual files a valid claim" for "date of filing of a valid claim by said individual" and substituted "first day of the calendar week in which such individual files his next valid claim" for "date of the next valid claim" and added the proviso clause; in subd. (h), last sentence, deleted the word "to" which appeared between the words "or" and "assist," substituted the word "an" for "any" and deleted the word "all" which appeared between the words "for" and "the"; in subd. (j)(3) substituted "approves" for "approve" and in subd. (m) inserted "Puerto Rico, the Virgin Islands."

Separability Clause

Section 10 of Ch. 164, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clauses

Section 2 of Ch. 160, Laws 1953 and Sec. 11 of Ch. 164, Laws 1955 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 12 of Ch. 164, Laws 1955 provided the act should be in effect from and after April 1, 1955.

87-149. Definitions—continued. (a) Total unemployment:

(1) An individual shall be deemed "totally unemployed" in any

week during which he performed no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(3) As used in this subsection the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of fifteen dollars ($15.00) in any one week, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than fifteen dollars ($15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, and any overtime worked immediately following such eight (8) hours, whichever is greater.

(b) "Unemployment compensation administration fund," means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(c) "Wages," means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission.

Wage records kept by the commission for the purposes of this act prior to January 1, 1941, shall be kept on the basis of wages payable, and wage records kept by the commission for the purposes of this act after January 1, 1941, shall be kept on the basis of wages paid.

Provided, however, that the term "wages" shall not include—

(1) The amount of any payment made to, or on behalf of, an employee by an employer on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical and hospitalization expenses in connection with sickness or accident disability, or

(D) Death,

(E) Services performed for a fraternal benefit society, lodge, order, service club or association having a total annual payroll of less than five hundred dollars ($500.00) in any calendar year.

(F) Remuneration paid by any county welfare office from public funds for services performed at the direction and request of such county welfare office.

(d) "Week," means a period of seven (7) consecutive calendar days ending at midnight on Saturday.

(e) "Weekly benefit amount." An individual's "weekly benefit amount," means the amount of benefits he would be entitled to receive for one (1) week of total unemployment.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957.

Amendments

The 1955 amendment substituted "fifteen ($15.00)" for "seven ($7.00)" each time it appears in subd. (a)(3) and added subd. (c)(1)(F).

The 1957 amendment in subd. (a)(3) inserted the words "and any overtime worked immediately following such eight (8) hours"; in subd. (c) deleted two former sentences which read "Commencing January 1, 1941, "wages," means all remuneration up to and including three thousand ($3,000.00) dollars in a calendar year paid for personal services, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of all remuneration paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission" and in subd. (d) substituted "a" for "such" and "ending at midnight on Saturday" for "as the commission may by regulations prescribe."

Separability Clauses

Section 4 of Ch. 238, Laws 1955 and Sec. 13 of Ch. 171, Laws 1957 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clauses

Section 5 of Ch. 238, Laws 1955 and Sec. 14, Ch. 171, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Dates

Section 6 of Ch. 238, Laws 1955 read "This act shall be in full force and effect from and after April 1, 1955, and section 1 shall apply to all benefit years beginning after April 1, 1955, and the insured status of all claimants who have a benefit year current on or after April 1, 1955, shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision."

Section 15 of Ch. 171, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon. 14 ALR 2d 634.

TITLE 88—WAREHOUSES AND STORAGE

Chapter 1. Uniform warehouse receipts act, 88-133.

CHAPTER 1—UNIFORM WAREHOUSE RECEIPTS ACT

Section 88-133. Satisfaction of warehouseman's lien—advertisement and sale of goods and disposition of proceeds.

88-110. (4088) **Warehouseman when liable for conversion.**

Tort liability of warehouseman for theft by servant. 15 ALR 2d 847.

Storage charges collectible by warehouseman guilty of negligence causing injury to, or destruction of, goods of a perishable nature. 32 ALR 2d 918.

88-133. (4111) **Satisfaction of warehouseman's lien—advertisement and sale of goods and disposition of proceeds.** A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized account of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten (10) days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, and advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two (2) consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen (15) days from the time of the first publication; provided, however, that if there is no newspaper published in such place or if no newspaper published in such place will publish

the advertisement provided for herein, the advertisement shall be posted at least ten (10) days before such sale in not less than six (6) conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

History: En. Sec. 33, Ch. 154, L. 1917; re-en. Sec. 4111, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1955.

Amendment

The 1955 amendment in the last sentence of the second paragraph of subd. (d) inserted the words "provided, however, that" and "or if no newspaper published in such place will publish the advertisement provided for herein."

TITLE 89—WATERS AND IRRIGATION

Chapter 1. Water conservation board, state, 89-116.1, 89-116.2.
2. Electrification Authority Act, State, Repealed—Section 1, Chapter 213, Laws of 1953.
8. Water rights—appropriation and adjudication, 89-829, 89-856 to 89-864.
9. Yellowstone River Compact—ratification of, 89-903 to 89-916.
10. Water commissioners—determination of joint rights, 89-1004.
13. Irrigation districts—board of commissioners, powers, duties and elections, 89-1311.
21. Irrigation districts—appeals—miscellaneous provisions, 89-2122.
27. Drainage districts—continuation and alteration of existing districts, 89-2702, 89-2704.
28. Drainage districts—miscellaneous provisions, 89-2821 to 89-2825.
30. Sage Creek Basin, 89-3001, 89-3002.
31. Wells, 89-3101 to 89-3103.

CHAPTER 1—WATER CONSERVATION BOARD, STATE

Section 89-116.1. Water conservation bond fund.
89-116.2. Purchase of bonds.

89-116.1. Water conservation bond fund. For the purpose of acquiring and administering the outstanding water conservation revenue bonds issued for seventeen [17] major irrigation projects owned and constructed by the state water conservation board, there is hereby created a fund which shall hereinafter be designated "Water Conservation Bond Fund," which shall consist of all moneys that may be appropriated thereto by the legislative assembly from other funds in the state treasury; all sums received from the sale of water through water purchase contracts or otherwise from said seventeen [17] irrigation projects, except those funds which are specifically collected for the operation and maintenance of said projects; and all other income or other benefits arising from, out of, or in connection with the ownership of said projects from whatever source derived.

History: En. Sec. 1, Ch. 148, L. 1951.

Title of Act

An act creating a water conservation bond fund to be designated the "Water Conservation Bond Fund"; providing what moneys said fund shall consist of; providing for the purchase of water conservation bonds of the state of Montana out of moneys in said fund; providing said bonds shall be held and administered by the state water conservation board for the benefit of said fund; providing for the transfer of moneys in said fund to the state general fund and repealing all acts or parts of acts in conflict herewith.

89-116.2. Purchase of bonds. From the moneys appropriated and credited to the "Water Conservation Bond Fund," there shall be paid upon vouchers approved by the state water conservation board and attested by its secretary, the amount of one million four hundred fifty thousand dollars ($1,450,000.00) or such lesser amount as is necessary to fully pay for the said bonds on the seventeen [17] irrigation projects, said bonds to be held by the state water conservation board, and to be administered by the said state water conservation board for the benefit of said "Water Conservation Bond Fund." All sums as remain in said fund on June 30,

1952 and on each succeeding June 30, shall be transferred to the state general fund.

History: En. Sec. 2, Ch. 148, L. 1951.

Repealing Clause

Section 3 of Ch. 148, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 148, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

CHAPTER 2—ELECTRIFICATION AUTHORITY ACT, STATE

(Repealed—Section 1, Chapter 213, Laws of 1953)

89-201 to 89-215. (349.39 to 349.53) Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 98, L. 1935), which comprised the State Electrification Authority Act, were repealed by Sec. 1, Ch. 213, Laws 1953.

CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

89-701. (2658) Dams and reservoirs—how constructed.

Application

An instruction in the precise language of this section should not be given where the plaintiff is suing on the theory of common-law negligence. Richland County v. Anderson, — M —, 291 P 2d 267, 275.

CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

Section 89-829. Procedure for appropriating waters of adjudicated streams.
89-856. Clark Fork river—impounding of water—appropriation.
89-857. Conveyance of stored water for irrigation through a natural channel of a stream—petition to be filed in district court—contents of petition.
89-858. Notice of hearing.
89-859. Objections and hearing.
89-860. Order and decree of court.
89-861. Authority of water commissioner.
89-862. Term of office of water commissioner and compensation.
89-863. Penalty for interference.
89-864. Application of act and jurisdiction.

89-801. (7093) What waters may be appropriated.

Diffused Surface Water

Defendants could not be prevented from collecting diffused surface waters on their lands since plaintiffs could not make a valid appropriation for use of such water on their lands located a number of miles below. Doney v. Beatty, 124 M 41, 220 P 2d 77, 82.

Prior Rights

Where plaintiff had over the years constructed a series of dikes in order to spread over his land the water which would flow down a dry gulley after the melting of snow or a heavy rainfall, he had a prior right to the extent that his project was finished. He who first diverts the water to a beneficial use has the prior right thereto where the right is based upon the custom and practice of the early settlers and where there was no compliance with the statute. Midkiff v. Kincheloe, 127 M 324, 263 P 2d 976, 978. (See, however, the dissenting opinion in the case in which it was contended that the waters were flood and waste waters and to which the defendant had a right to impound in a stock reservoir, 127 M 324, 263 P 2d 976, 979.)

Liability, as regards surface waters, for raising surface level of land. 12 ALR 2d 1338.

89-803. (7095) **Point of diversion may be changed—change of use.**

Liability, as regards surface waters, for raising surface level of land. 12 ALR 2d 1338.

89-804. (7096) **Water may be turned into natural channels, etc.**

References

Cited or applied in Meine v. Ferris, 126 M 210, 247 P 2d 195, 198.

89-805. (7097) **Return of surplus water to stream.**

Surplus Water

Water in excess of amount which defendant was entitled to appropriate and which ran over spillway on to plaintiff's land was "surplus water" and not artificial water. Clausen v. Armington, 123 M 1, 212 P 2d 440.

89-807. (7098) **First in time, first in right.**

References

Cited or applied in Meine v. Ferris, 126 M 210, 247 P 2d 195, 198.

89-810. (7100) **Notice of appropriations.**

Necessity of Notice

A person may make a valid appropriation of water by actual diversion and use thereof without filing a notice of appropriation. Clausen v. Armington, 123 M 1, 212 P 2d 440.

Operation and Effect

Plaintiffs were not entitled to any water rights by virtue of a notice which was given 16 years before the enactment of this section, and where the place the water was to be taken as stated in the notice was a mile from where the plaintiff is claiming the water. Stearns v. Benedick, 126 M 272, 247 P 2d 656, 657.

Cross-Reference

See note to sec. 89-812. Clausen v. Armington, 123 M 1, 212 P 2d 440.

89-811. (7101) **Diligence in appropriating.**

Cross-Reference

See note to sec. 89-812. Clausen v. Armington, 123 M 1, 212 P 2d 440.

89-812. (7102) **Effect of failure.**

Date of Appropriation Where Statute is Not Complied With

Where ditch was not constructed within reasonable time after date of notice of appropriation, the date of appropriation would not relate back to the date of such notice but would date from the time the water was actually used. Clausen v. Armington, 123 M 1, 212 P 2d 440.

References

Cited in Midkiff v. Kincheloe, 127 M 324, 263 P 2d 976, 978.

89-818. (7108) **Miner's inch equivalent in gallons.**

References

Cited or applied in Clausen v. Armington, 123 M 1, 212 P 2d 440; Stearns v. Benedick, 126 M 272, 247 P 2d 656, 658.

89-829. (7119) **Procedure for appropriating waters of adjudicated streams.** (1) Any person hereafter desiring to appropriate the waters of a river, or stream, ravine, coulee, spring, lake, or other natural source of supply concerning which there has been an adjudication of rights between appropriators or claimants, as contemplated in section 89-839, shall:

(a) employ a competent engineer to make a survey of the ditch, or aqueduct, whereby the water is to be conveyed from the source of supply, or the dam or other work whereby the water is to be impounded, or both; or

(b) cause to be prepared an aerial photograph with a drawing thereon showing the course of the proposed ditch or aqueduct, or the location of the proposed dam or other work, or both, together with a description of the course of said ditch or the location of said dam attached thereto; and the appropriators shall file with the clerk of the court in the county in which the water is appropriated a petition giving the amount of water sought to be appropriated, a description by name or otherwise of the water course or body from which he intends to appropriate the water, and a general description of the ditch or aqueduct, stating its size, length, and capacity, showing the proposed means of appropriation and use of the water, and also the place of use thereof. If the means of appropriation be a reservoir by which the water is to be impounded, the petition shall state the location and size thereof, together with the contemplated manner of its construction and the means of conveying the water to the place of contemplated use, and the contemplated use.

(2) There shall be filed with the petition a map or aerial photograph as hereinbefore provided showing the point of, and means of diversion, and the course of the ditch or aqueduct to its terminus, and if a reservoir, the contour line thereof, the height and width of the dam, the point and means of discharge therefrom, and the spillway. If the appropriator shall intend to mingle the waters appropriated from one stream with another, or shall intend to deposit the waters impounded in a reservoir into a stream, he shall so state.

(3) The appropriator shall declare in his petition that the water rights sought by him shall be subject to, and that in the use thereof he shall be bound by the terms of any decree theretofore rendered by a court of competent jurisdiction adjudicating the waters of such river, stream, ravine, coulee, spring, lake, or other natural source of supply, or, any body of water to which the same may be tributary, provided that water stored in a reservoir pursuant to an appropriation hereunder which is subsequent to an adjudication of waters in a flowing stream when so released from storage shall not be considered as a part of the natural flow of said adjudicated stream.

(4) The appropriator shall, as near as may be, give the names of all appropriators or claimants who have, or appear to have, rights in the source of supply, from which the appropriation is sought, and whose rights may be in anywise affected by the appropriation, and in the petition the petitioner shall be named as plaintiff, and all other parties as defendants.

History: En. Sec. 4, Ch. 228, L. 1921; re-en. Sec. 7119, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1957.

Amendment

The 1957 amendment divided subd. (1) into subsections (a) and (b); in subsec. (b) inserted the words "cause to be prepared an aerial photograph with a drawing thereon showing the course of the proposed ditch or aqueduct, or the location of the proposed dam or other work, or both, together with a description of the course of said ditch or the location of said dam attached thereto;" and deleted the words "prepared by the engineer" which appeared between the words "capacity" and "showing"; in subd. (2) inserted the words "or aerial photograph as hereinbefore provided" and in subd. (3) added the proviso clause.

Repealing Clause

Section 2 of Ch. 179, Laws 1957 repealed all acts and parts of acts in conflict therewith.

89-856. Clark Fork river—impounding of water—appropriation. The waters of the Clark Fork river may be impounded or restrained within the state of Montana for a distance not exceeding twenty-five [25] miles from the Idaho-Montana boundary line, by a dam located on said river in the state of Idaho, and constructed by any person, firm, partnership or corporation authorized to do business in the state of Montana, provided, however, that any present or future appropriations of water in the water shed in the state of Montana for irrigation and domestic use above said dam shall have priority over water for power use at said dam.

History: En. Sec. 1, Ch. 3, L. 1951.

Title of Act

An act authorizing the impounding and restraining within the state of Montana, the waters of the Clark Fork River for a distance not exceeding twenty-five miles from the Idaho-Montana boundary line, by a dam located on said river, in the state of Idaho, and constructed by any person, firm, partnership or corporation authorized to do business in the state of Montana, and providing that present and future appropriations of water for irrigation and domestic use in Montana shall have priority over water for power use at said dam, and providing that this act shall take effect upon its passage and approval.

Preamble

WHEREAS, water is one of Montana's great natural resources; and

WHEREAS, the Clark Fork river flows from Montana to Idaho; and

WHEREAS, in the future a compact may be entered into by the states and the United States for the natural resources of the Columbia River basin; and

NOW, THEREFORE, this water resource shall be taken into consideration in such compact for allocation to Montana.

Effective Date

Section 2 of Ch. 3, L. 1951 provided the act should be in effect upon its passage and approval. Approved January 25, 1951.

References

Cited or applied in State ex rel. Bartholomew v. District Court, 126 M 183, 248 P 2d 215.

89-857. Conveyance of stored water for irrigation through a natural channel of a stream—petition to be filed in district court—contents of petition. Whenever the owner of a reservoir constructed, operated and maintained for the purpose of storing and supplying water for irrigation, or whenever any person has been authorized to operate and maintain a reservoir constructed for the purpose of storing, supplying and distributing water to a person or persons entitled to the use thereof for irrigation, desires to use the natural channel of a stream for the purpose of conveying such stored water from the reservoir to the place or places of such use, such owner or person or persons may file in the district court of any county in which the natural channel of a stream, or any part thereof, is located, a petition to that effect setting forth: (1) The name of the petitioner and whether he is the owner of the reservoir constructed and maintained for the purpose of storing and supplying water for irrigation and is entitled to the use of the water stored in said reservoir for such purposes, or whether he is authorized to operate and maintain the reservoir, constructed for the purpose of storing, supplying and distributing water to the person or persons entitled to the use thereof for irrigation; (2) The location of the reservoir and the amount of water stored therein; (3) The name and location of that part of the natural channel of the stream proposed to be used to convey such stored water to the place or places of use; (4) The amount

of stored water proposed to be released by petitioner for irrigation; (5) The period of time over which it is proposed to convey such stored water; and (6) The name or names of the person or persons entitled to the use of such stored water for irrigation, and the location of the place or places of use.

History: En. Sec. 1, Ch. 114, L. 1957.

Title of Act

An act providing for the conveyance of stored water through the natural channel of a stream from an irrigation reservoir to the place of use; providing for the filing of a petition in district court by the owner of such a reservoir and the water stored therein, or by any person authorized to operate and maintain a storage reservoir for irrigation; providing for the requirements of said petition; providing for a hearing of said petition and notice thereof; providing for objections to said petition and the hearing; providing for an order and decree of court granting the right to convey stored water from the reservoir to the place of use and appointing a water commissioner or commissioners to distribute the said stored water to those who are entitled to the use thereof for irrigation; providing for the authority of the water commissioner or commissioners and their duties; providing for the term of office of water commissioner and fixing his compensation; providing for penalties for violations of the act; providing for the application of the act and jurisdiction; and repealing all acts and parts of acts in conflict herewith and providing for an effective date.

89-858. Notice of hearing. Upon the filing of the petition the court or judge shall fix a time and place for hearing of said petition which time shall not be less than ten (10) days after the filing of said petition. The petitioner shall give notice of said hearing by causing notices to be posted in at least three (3) public places in each county wherein is located a part of the natural channel by which it is proposed to convey the stored water from the reservoir to the place or places of use at least ten (10) days before the date of the hearing. Such notices shall contain the name of the petitioner, the purpose of the petition, and the time and place of the hearing.

History: En. Sec. 2, Ch. 114, L. 1957.

89-859. Objections and hearing. At the time set for hearing, or any subsequent time to which the hearing may be postponed, any person whose property rights may be affected by the granting of the petition, may appear and file written objections to the petition and contest the same. On the hearing, upon due proof of the posting of the notice as required by the preceding section, the court or judge must proceed to hear the petition and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to appear and testify, in the same manner, and with like effect, as in civil actions.

History: En. Sec. 3, Ch. 114, L. 1957.

89-860. Order and decree of court. If the court or judge is satisfied, after a hearing upon the petition, that the petitioner is the owner of a reservoir constructed and maintained for the purpose of storing and supplying water for irrigation and that he is entitled to the use of the water stored in said reservoir for said purposes, or whether he is authorized to operate and maintain a reservoir constructed for the purpose of storing, supplying and distributing water to the person or persons entitled to the use thereof for irrigation, and the petitioner desires to convey the said stored water, or a part thereof, through the natural channel of the stream from the reservoir to the place or places of use, a decree shall be made and en-

tered by the court or judge granting and decreeing to the petitioner the right to convey said stored water, or a part thereof, through the said natural channel of the stream from the reservoir to the place or places of use, and the court or judge shall appoint one or more water commissioners who shall have the authority to distribute such stored water to the person or persons who are entitled to the use thereof for irrigation.

An appeal shall lie from the decree of the district court to the supreme court as in other civil actions.

History: En. Sec. 4, Ch. 114, L. 1957.

89-861. Authority of water commissioner. Each water commissioner, appointed under this act, shall admeasure and distribute the stored water to the person or persons entitled to the use thereof. The petitioner shall keep the water commissioner or water commissioners advised as to the amount of stored water to be delivered to each person. Each water commissioner shall have the authority to adjust the headgates, or other means of diversion, of all ditches of all appropriators from the natural channel for the purpose of insuring that the stored water is conveyed to persons entitled to the use thereof and not taken or used by others. The duties and the authority of the water commissioner or water commissioners shall extend over the full length of the part of the natural channel used as a means of conveyance of the stored water.

History: En. Sec. 5, Ch. 114, L. 1957.

89-862. Term of office of water commissioner and compensation. Each water commissioner, appointed under the provisions of this act, shall hold his office for such a period of time as may be designated by the court or judge, and the court or judge shall fix the compensation of each water commissioner which compensation shall be paid by the owner of the reservoir or by the person authorized to operate and maintain the same.

History: En. Sec. 6, Ch. 114, L. 1957.

89-863. Penalty for interference. After the water commissioner or water commissioners have adjusted the headgates, or other means of diversion, of all ditches, the owners of which are not entitled to the use of such stored water, as provided in section 4 [89-860], hereof, any person who shall raise or tamper with any such headgate or other means of diversion, in such manner as to misappropriate any portion of such stored water to his own use and benefit, whether he be the owner of such headgate or other means of diversion, or not, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10.00), nor more than one thousand dollars ($1,000.00), or imprisonment in the county jail not more than six (6) months, or by both such fine and imprisonment.

Whenever any water commissioner, appointed under this act, shall discover any person in the act of committing a misdemeanor declared in this section, he shall arrest such person and turn him over to the sheriff of the county in which the misdemeanor was committed and he shall file with the county attorney of such county an affidavit setting out the facts with reference to the commission of such misdemeanor.

History: En. Sec. 7, Ch. 114, L. 1957.

89-864. Application of act and jurisdiction. The provisions of this act shall apply only to unadjudicated streams. The district court of any county in which the natural channel, or any part thereof, is located shall have jurisdiction hereunder and such jurisdiction, once obtained, shall extend into other counties in which any part of the natural channel, used as a means of conveyance of the stored water, is located.

History: En. Sec. 8, Ch. 114, L. 1957.

Repealing Clause

Section 9 of Ch. 114, Laws 1957 read "All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that nothing in this act shall be deemed to repeal section 89-804 of the Revised Codes of Montana, 1947."

Effective Date

Section 10 of Ch. 114, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

Section 89-903. Yellowstone River Compact—approval.
89-904. Legislative and congressional approval necessary.
89-905. Purpose of the act.
89-906. Definitions.
89-907. Filing written statement with the state engineer.
89-908. Duty to install weir or other measuring device.
89-909. Duty to measure water.
89-910. Rights acquired prior to January 1, 1950 not to be impaired by nor subject to the act.
89-911. Domestic and stock uses not within the act.
89-912. State engineer to make rules and regulations.
89-913. Act applies to adjudicated and non-adjudicated waters.
89-914. State engineer to make record available.
89-915. County attorneys to perform certain services.
89-916. Penalty.

89-901, 89-902. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 85, L. 1945), relating to the approval and ratification of the Yellowstone River Compact, were repealed by Sec. 1, Ch. 91, Laws 1953, effective February 25, 1953.

89-903. Yellowstone River Compact—approval. The legislative assembly of the state of Montana hereby approves and ratifies the compact designated as the "Yellowstone River Compact," dated at the city of Billings, state of Montana, on the 8th of December, 1950, signed by Fred E. Buck, A. W. Bradshaw, H. W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P. F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R. R. Renne and Keith W. Trout, as state representatives of the state of Montana on a compact commission between the states of Montana, North Dakota and Wyoming; which compact is as follows:

YELLOWSTONE RIVER COMPACT

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity, and desiring to remove all causes of present and future controversy between said states and between persons in one and persons in another with respect to the waters of the Yellowstone river and its tributaries, other than waters within

or waters which contribute to the flow of streams within the Yellowstone national park, and desiring to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control and use of water in the Yellowstone river basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the Act of Congress of the United States of America, approved June 2, 1949 (Public Law 83, 81st Congress, First Session), for the attainment of these purposes, and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana:

Fred E. Buck
A. W. Bradshaw
H. W. Bunston
John Herzog
John M. Jarussi
Ashton Jones
Chris Josephson
A. Wallace Kingsbury
P. F. Leonard
Walter M. McLaughlin
Dave M. Manning
Joseph Muggli
Chester E. Onstad
Ed F. Parriott
R. R. Renne
Keith W. Trout

For the state of North Dakota:

I. A. Acker
Einar H. Dahl
J. J. Walsh

For the state of Wyoming:

L. C. Bishop
Earl T. Bower
J. Harold Cash
Ben F. Cochrane
Ernest J. Goppert
Richard L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith
N. V. Kurtz
Harry L. Littlefield
R. E. McNally
Will G. Metz
Mark N. Partridge
Alonzo R. Shreve
Charles M. Smith
Leonard F. Thornton
M. B. Walker

who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to-wit:

ARTICLE I

A. Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone river system under the authority of said state.

B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person. permittee, or appropriator authorized by or under the laws of a signatory

state, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone river system under the authority of said state, shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

ARTICLE II

A. The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana," "North Dakota," and "Wyoming," respectively.

B. The terms "commission" and "Yellowstone river compact commission" mean the agency created as provided herein for the administration of this compact.

C. The term "Yellowstone river basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone river and its tributaries, and includes the area in Montana known as lake basin, but excludes those lands lying within Yellowstone national park.

D. The term "Yellowstone river system" means the Yellowstone river and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone river near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone national park.

E. The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone river, including interstate tributaries and tributaries thereof, but excluding those which are within or contribute to the flow of streams within the Yellowstone national park.

F. The term "interstate tributaries" means the Clarks Fork, Yellowstone river; the Big Horn river (except Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

G. The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone river or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone river or of the tributary from which it is taken.

H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.

I. The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

J. The term "stock water use" shall mean the use of water for livestock and poultry.

ARTICLE III

A. It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone river basin as between the states of Montana and North Dakota. The

provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one representative from the state of Wyoming and one representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by him at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.

B. The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

C. In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states, and shall compile a report for each year ending September 30 and transmit it to the governors of the signatory states on or before December 31 of each year.

D. The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies, and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission, shall cooperate, ex-officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.

E. The commission shall have power to formulate rules and regulations and to perform any act which they may find necessary to carry out the provisions of this compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.

F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one vote.

G. The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states, and may adopt and use an official seal which shall be judicially noticed.

ARTICLE IV

The commission shall itself, or in conjunction with other responsible agencies, cause to be established, maintained, and operated such suitable water gaging and evaporation stations as it finds necessary in connection with its duties.

ARTICLE V

A. Appropriative rights to the beneficial uses of the water of the Yellowstone river system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.

B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone river as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph A of this Article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. **Clarks Fork, Yellowstone River**

a. To Wyoming 60%
To Montana 40%

b. The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.

2. **Big Horn River (Exclusive of Little Big Horn River)**

a. To Wyoming 80%
To Montana 20%

b. The point of measurement shall be below the last diversion from the Big Horn river above its junction with the Yellowstone river, and the inflow of the Little Big Horn river shall be excluded from the quantity of water subject to allocation.

3. **Tongue River**

a. To Wyoming 40%
To Montana 60%

b. The point of measurement shall be below the last diversion from the Tongue river above its junction with the Yellowstone river.

4. **Powder River (Including the Little Powder River)**

a. To Wyoming 42%
To Montana 58%

b. The point of measurement shall be below the last diversion from the Powder river above its junction with the Yellowstone river.

C. The quantity of water subject to the percentage allocations, in paragraph B 1, 2, 3 and 4 of this Article V, shall be determined on an annual water year basis measured from October 1st of any year through September 30th of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. The total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October 1st to that given date;

2. The net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October 1st to that given date;

3. The net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October 1st to that given date;

4. The quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October 1st to that given date.

D. All existing rights to the beneficial use of waters of the Yellowstone river in the states of Montana and North Dakota, below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May 1 to September 30, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone river below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams, having their origin in either Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone river below Intake, Montana, are allotted to the respective states in which situated.

E. There are hereby excluded from the provisions of this compact:

1. Existing and future domestic and stock water uses of water: Provided, that the capacity of any reservoir for stock water so excluded shall not exceed 20 acre-feet;

2. Devices and facilities for the control and regulation of surface waters.

F. From time to time the commission shall re-examine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just, and equitable, giving consideration among other factors to:

Priorities of water rights;
Acreage irrigated;
Acreage irrigable under existing works; and
Potentially irrigable lands.

ARTICLE VI

Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone

river and its tributaries owned by or for Indians, Indian tribes, and their reservations.

ARTICLE VII

A. A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone river system not specifically apportioned to or appropriated by such upper state as provided in Article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state: Provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it: And provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

B. Each claim hereafter initiated for an appropriation of water in one signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

C. Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the state where the water is diverted and shall be recorded in the county and state where the water is used.

D. The use of water allocated under Article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities, shall be charged as a use by the state in which the use is made: Provided, that such use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

ARTICLE VIII

A lower signatory state shall have the right to acquire in an upper state by purchase, or through exercise of the power of eminent domain, such lands, easements, and rights-of-way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

ARTICLE IX

Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of Article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

ARTICLE X

No water shall be diverted from the Yellowstone river basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone river basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with Article V herein.

ARTICLE XI

The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in Article XV.

ARTICLE XII

This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

ARTICLE XIII

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States Supreme Court, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE XIV

The physical and other conditions characteristic of the Yellowstone river and peculiar to the territory drained and served thereby and to the development thereof, have actuated the signatory states in the consummation of this compact, and none of them, nor the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

ARTICLE XV

This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the congress of the United States.

ARTICLE XVI

Nothing in this compact shall be deemed:

(a) To impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities, in and to the use of the waters of the Yellowstone river basin nor its capacity to acquire rights in and to the use of said waters;

(b) To subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof, nor to create an obligation on the part of the United States of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) To subject any property of the United States of America, its agencies, or instrumentalities, to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

ARTICLE XVII

Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or of the United States of America, all other severable provisions of this compact shall continue in full force and effect.

ARTICLE XVIII

No sentence, phrase, or clause in this compact or in any provision thereof, shall be construed or interpreted to divest any signatory state or any of the agencies of [or] officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

IN WITNESS WHEREOF the commissioners have signed this compact in quadruplicate original, one of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of Our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck	/S/ Fred E. Buck
A. W. Bradshaw	/S/ A. W. Bradshaw
H. W. Bunston	/S/ H. W. Bunston
John Herzog	/S/ John Herzog
John M. Jarussi	/S/ John M. Jarussi
Ashton Jones	/S/ Ashton Jones
Chris Josephson	/S/ Chris Josephson
A. Wallace Kingsbury	/S/ A. Wallace Kingsbury

P. F. Leonard	/S/ P. F. Leonard
Walter M. McLaughlin	/S/ Walter M. McLaughlin
Dave M. Manning	/S/ Dave M. Manning
Joseph Muggli	/S/ Joseph Muggli
Chester E. Onstad	/S/ Chester E. Onstad
Ed F. Parriott	/S/ Ed F. Parriott
R. R. Renne	/S/ R. R. Renne
Keith W. Trout	/S/ Keith W. Trout

Commissioners for the state of North Dakota:

I. A. Acker	/S/ I. A. Acker
Einar H. Dahl	/S/ Einar H. Dahl
J. J. Walsh	/S/ J. J. Walsh

Commissioners for the state of Wyoming:

L. C. Bishop	/S/ L. C. Bishop
Earl T. Bower	/S/ Earl T. Bower
J. Harold Cash	/S/ J. Harold Cash
Ben F. Cochrane	/S/ Ben F. Cochrane
Ernest J. Goppert	/S/ Ernest J. Goppert
Richard L. Greene	/S/ Richard L. Greene
E. C. Gwillim	/S/ E. C. Gwillim
E. J. Johnson	/S/ E. J. Johnson
Lee K. Keith	/S/ Lee K. Keith
N. V. Kurtz	/S/ N. V. Kurtz
Harry L. Littlefield	/S/ Harry L. Littlefield
R. E. McNally	/S/ R. E. McNally
Will G. Metz	/S/ Will G. Metz
Mark N. Partridge	/S/ Mark N. Partridge
Alonzo R. Shreve	/S/ Alonzo R. Shreve
Charles M. Smith	/S/ Charles M. Smith
Leonard F. Thornton	/S/ Leonard F. Thornton
M. B. Walker	/S/ M. B. Walker

I have participated in the negotiation of this compact and intend to report favorably thereon to the congress of the United States.

/S/ R. J. Newell
R. J. Newell,
Representative of the
United States of America.

History: En. Sec. 1, Ch. 39, L. 1951.

Compiler's Note

The bracketed word "or" was inserted by the compiler.

Title of Act

An act to approve and ratify the "Yellowstone River Compact" between the states of Montana, North Dakota and Wyoming.

89-904. Legislative and congressional approval necessary. Said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been approved by the legislature of each of the said states and by the congress of the United States. The governor of Montana shall give notice of the ratification and

approval of said compact by the thirty-second legislative assembly of the state of Montana to the governors of each of the remaining signatory states and to the president of the United States.

History: En. Sec. 2, Ch. 39, L. 1951.

89-905. Purpose of the act. Under the provisions of the Yellowstone river compact (chapter 39, Laws of Montana, 1951 [89-903, 89-904]), all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone river, existing in each signatory state as of January 1, 1950, have been recognized and shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation. All appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone river acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in subdivisions B and C of Article V of said compact. The purpose of this act is to provide the means to determine the various appropriative rights to the beneficial uses of water of the interstate tributaries of the Yellowstone river, acquired after January 1, 1950, and the quantity of water diverted and used by each such appropriator during each year, to enable the state of Montana and the Yellowstone river compact commission to comply with and to administer the percentage allocations as provided in subdivisions B and C of Article V of said compact.

History: En. Sec. 1, Ch. 92, L. 1953.

Title of Act

An act relating to the administration of the Yellowstone river compact; defining the purpose of the act; providing for the filing of statement with state engineer of all appropriative claims to the use of water of interstate tributaries of the Yellowstone river acquired after January 1, 1950; defining interstate tributaries; providing for the installation of measurement devices; providing for the measurement of water; authorizing state engineer to make reasonable rules and regulations; authorizing state engineer to make records available to the Yellowstone river compact commission; providing that county attorneys shall perform certain services; providing for penalties for violations; and repealing of all acts or parts of acts in conflict with the provisions of this act.

89-906. Definitions. As used in this act, the following terms shall have the following meaning:

(a) The term "person" shall mean any person, corporation, partnership, association, municipal corporation, agency and all others authorized by the laws of the state of Montana to appropriate water for beneficial uses. Where the singular is used it shall be construed to include the plural.

(b) The term "interstate tributaries" or "interstate tributary" shall mean the following described rivers which contribute to the flow of the Yellowstone river in the state of Montana, including all tributaries thereof: the Clark Fork of the Yellowstone river; the Big Horn river (except the Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(c) The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, launder-

ing, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(d) The term "stock water use" shall mean the use of water for livestock and poultry.

(e) The term "divert" and "diversion" shall mean the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

History: En. Sec. 2, Ch. 92, L. 1953.

89-907. Filing written statement with the state engineer. Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the state engineer at his office in Helena, Montana, a written statement containing the following information:

(a) The name of the claimant and his address.

(b) Date of appropriation or the date when the water was first applied to a beneficial use.

(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, Revised Codes of Montana, 1947, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or non-adjudicated stream, river or other source of water.

The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statements are true.

History: En. Sec. 3, Ch. 92, L. 1953.

89-908. Duty to install weir or other measuring device. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the state engineer, and if in his judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured,

he may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

History: En. Sec. 4, Ch. 92, L. 1953.

89-909. Duty to measure water. It shall be the duty of every said claimant to measure all the water being diverted by him and to keep accurate records thereof on forms prescribed and furnished by the state engineer, and within fifteen days after the first day of November of each year to file such written records with the state engineer at his office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953.

89-910. Rights acquired prior to January 1, 1950 not to be impaired by nor subject to the act. The rights to the beneficial use of any water of any interstate tributary of the Yellowstone river, acquired prior to and including January 1, 1950, shall not be impaired by nor subject to this act.

History: En. Sec. 6, Ch. 92, L. 1953.

89-911. Domestic and stock uses not within the act. Any appropriation of water from any interstate tributary of the Yellowstone river made for domestic or stock water uses shall not come within the provisions of this act, provided, that the capacity of any reservoir for stock water shall not exceed twenty acre feet.

History: En. Sec. 7, Ch. 92, L. 1953.

89-912. State engineer to make rules and regulations. The state engineer shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone river compact.

History: En. Sec. 8, Ch. 92, L. 1953.

89-913. Act applies to adjudicated and non-adjudicated waters. The provisions of this act shall apply to both adjudicated and non-adjudicated waters of the interstate tributaries of the Yellowstone river.

History: En. Sec. 9, Ch. 92, L. 1953.

89-914. State engineer to make record available. The state engineer shall furnish and make available to the Yellowstone river compact commission, from the records filed in his office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from said interstate tributaries and any other information that his records may disclose as may be required by the Yellowstone river compact commission.

History: En. Sec. 10, Ch. 92, L. 1953.

89-915. County attorneys to perform certain services. The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this act within their respective counties as the state engineer shall require.

History: En. Sec. 11, Ch. 92, L. 1953.

89-916. Penalty. Any person who violates or refuses or neglects to comply with any provision of this act, or any order, rule or regulation

promulgated by the state engineer pursuant thereto or the Yellowstone river compact, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) for each offense.

History: En. Sec. 12, Ch. 92, L. 1953.

Separability Clause

Section 13 of Ch. 92, Laws 1953 read: "If any provision of this act, or the application thereof to any person or circumstance, is held unconstitutional, the remainder of the act, or the application of such provisions to other persons or circumstances, shall not be affected thereby."

Repealing Clause

Section 14 of Ch. 92, Laws 1953 repealed all acts and parts of acts in conflict with the provisions of this act.

Effective Date

Section 15 of Ch. 92, Laws 1953 provided the act should be in effect upon its passage and approval. Approved February 25, 1953.

CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS

Section 89-1004. Term of office of water commissioner.

89-1001. (7136) **Appointment of water commissioners—authority, etc.**

Operation and Effect

Any act of the judge or of any water commissioner appointed by him done in violation of the plain mandate of the statute, which gives to commissioner authority to admeasure and distribute to the parties bound by the decree or decrees the waters to which they are entitled under the decrees, cannot be relied upon by a person to establish his claimed right to the prior use of waters by adverse possession. Lamping v. Diehl, 126 M 193, 246 P 2d 230, 233, 235.

89-1004. (7139) **Term of office of water commissioner.** Every water commissioner so appointed shall hold his office for such time during the irrigation season of each year as may be designated by the judge in the order making such appointment; the judge, in his discretion, shall fix the date of the commencement of such term, and may, in his discretion, or when requested in writing by at least three (3) of such persons entitled to the use of such waters, change the term for closing of the commissioner's service.

History: En. Sec. 4, Ch. 43, L. 1911; amd. Sec. 1, Ch. 116, L. 1921; re-en. Sec. 7139, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1955.

Amendment

The 1955 amendment substituted the words "the judge, in his discretion, shall fix the date of the commencement of such term" for the words "provided, that the judge shall not fix the date of commencing such term until requested in writing, by at least three persons entitled to the use of such waters" which appeared after the word "appointment."

CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION

89-1204. (7169) **Hearing on petition and appointment of commissioners.**

References

Cited or applied in In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241.

CHAPTER 13—IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS, POWERS, DUTIES AND ELECTIONS

Section 89-1311. Qualification of electors—voting rights, how determined.

89-1311. (7184) **Qualification of electors—voting rights, how determined.** At all elections held under the provisions of this act, except as

herein otherwise expressly provided, the following holders of title, or evidence of title, to lands within the district, herein designated electors, shall be entitled to vote:

1. All persons having the qualifications of electors under the constitution and general and school laws of the state;

2. Guardians, executors, administrators, and trustees residing in the state;

3. Domestic corporations, by their duly organized agents.

In all elections held under this act, each elector shall be permitted to cast one vote for each forty acres of irrigable land, or major fraction thereof, owned by such elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes, or within congressional subdivisions, platted lots or blocks, except as hereinafter provided for, election precincts or district divisions, but any elector owning any less than forty acres of irrigable land shall be entitled to one vote. Until actual determination of the irrigable area under the plan of reclamation proposed is had, all land included within the boundaries of the district shall be deemed to be irrigable land for election purposes.

Where land is owned by co-owners, said owners may designate one of their number, or an agent, to cast the vote for said owners, and one vote only for each forty acres of irrigable land, or major fraction thereof, shall be cast by said co-owner or agent. Where land is under contract of sale to a purchaser residing within the state, such purchaser may vote on behalf of the owner of said land. When voting, the agent of a corporation, or of co-owners, or the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district, or with the election officials, a written instrument of his authority, executed and acknowledged by the proper officers of said corporation, or by said co-owners, or by the owner of such land under contract of sale, as the case may be, and thereupon such agent or co-owner, or purchaser, as the case may be, shall be deemed an elector within the meaning of this act. Where the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of five per cent (5%) or more of the total acreage of the district, each elector shall be permitted to cast one vote for each one acre of irrigable land or major fraction thereof owned by such elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for the assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than one acre of irrigable land within said district shall be entitled to one vote. The balloting shall take place in the following manner: Ten (10) votes or less, separate ballots will be used; more than ten (10) votes, the elector shall vote in blocks of ten using one ballot for each ten votes and separate ballots for odd votes over multiples of ten. The election shall otherwise conform with the provisions set out in section 89-1308 of this chapter. It shall be the duty of the chairman of the commissioners, or such commissioner as he may delegate,

to determine before each election whether the provisions of this paragraph are in force or whether the provisions heretofore set out shall apply.

History: En. Sec. 19, Ch. 146, L. 1909; re-en. Sec. 7184, R.C.M. 1921; amd. Sec. 6, Ch. 157, L. 1923; amd. Sec. 1, Ch. 164, L. 1953.

Amendment

The 1953 amendment inserted the words "except as hereinafter provided for" in the second paragraph and added the last four sentences of the last paragraph.

Repealing Clause

Section 2 of Ch. 164, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 164, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

CHAPTER 18—IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS

89-1803. (7234) **All irrigable lands chargeable alike.**

Discrimination between property within and that outside governmental districts as to rates. 4 ALR 2d 598, 610.

CHAPTER 21—IRRIGATION DISTRICTS—APPEALS—MISCELLANEOUS PROVISIONS

Section 89-2122. Lien of amounts to be paid the United States—special tax.

89-2122. (7264.12) **Lien of amounts to be paid the United States—special tax.** All amounts to be paid to the United States under any contract between the district and the United States made hereunder shall be a general obligation of the district and said amounts to be paid to the United States shall be a lien upon the irrigation system of the district. All lands now within the district or hereafter embraced within the district shall be subject to a special tax or assessment for the payment of all amounts to be paid to the United States under any such contract between the district and the United States, and said special tax or assessment shall constitute a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

History: En. Sec. 3, Ch. 24, L. 1931; amd. Sec. 1, Ch. 83, L. 1955.

Amendment

The 1955 amendment in the first sentence substituted the words "general obligation of the district" for "lien upon all the lands now within the district or hereafter embraced within the district, and for the benefit of which said contract between the district and the United States was made" and deleted the word "also" which appeared after the words "United States shall"; began a new sentence with the word "all" and added the words "lands now within the district or hereafter embraced within the district" immediately following.

Repealing Clause

Section 2 of Ch. 83, Laws 1955 repealed all acts or parts of acts in conflict therewith.

CHAPTER 27—DRAINAGE DISTRICTS—CONTINUATION AND ALTERATION OF EXISTING DISTRICTS

Section 89-2702. Alterations or additions to system—petition required, contents of.
89-2704. Objections—dismissal of petition—procedure at hearing.

89-2702. (7364.3) **Alterations or additions to system—petition required, contents of.** Whenever, in the judgment of the commissioners of any drain district or drainage district, it is necessary or will be beneficial to such district to make any alteration and/or any addition to the drainage

system of such district, they shall file a petition with the clerk of the court having jurisdiction of such district, in which shall be stated the proposed alteration of and/or the proposed addition to the drainage system of said district, the necessity therefor and the probable cost of making such alteration and/or addition. Whenever such commissioners shall fail or refuse to file such petition or, in event any landowners desire to file such petition, such petition may be filed by such landowners, provided the same be signed by the owners of at least forty per centum (40%) in area of the lands in said district.

History: En. as Sec. 7364-C by Sec. 2, Ch. 97, L. 1931; amd. Sec. 1, Ch. 70, L. 1953.

Compiler's Note

Section 2 of Ch. 70, Laws 1953 is compiled as sec. 89-2704.

Amendment

The 1953 amendment added the last sentence to this section.

89-2704. (7364.5) **Objections—dismissal of petition—procedure at hearing.** Any such landowner or corporation may at any time prior to five (5) days before the date fixed for such hearing file his or its objections to such petition. A copy of such objections shall be delivered to the attorney for said commissioners, if they have an attorney of record, or to the chairman of the board of commissioners of said district, if there be no such attorney of record, prior to filing the original thereof with the clerk of said court. If objections are made and filed by the owners of at least seventy-five per centum (75%), in area of the lands in said district, said petition shall be dismissed and no further proceedings had thereon. If the owners of less than seventy-five per centum (75%) in area of the lands in said district object to such petition, then, on the date fixed for such hearing, or upon any day to which such hearing may be adjourned, the court having jurisdiction will hear testimony in support of said petition and in opposition thereto, and after such hearing shall determine whether the proposed alteration and/or addition is necessary, whether it will be beneficial to said district and improve the drainage system thereof, and either approve or deny such petition or modify and change the alteration and/or addition proposed. If the court shall approve such petition, or modify and change the alteration and/or addition proposed, the court shall by order, direct said commissioners to proceed with said work with all convenient speed. So far as possible, such hearing shall be conducted as other hearings and trials in the district courts of the state of Montana, and the laws of the state of Montana with reference to hearings and trials, so far as applicable, shall govern in the conduct of such hearings.

History: En. as Sec. 7364-E by Sec. 2, Ch. 97, L. 1931; amd. Sec. 2, Ch. 70, L. 1953.

Compiler's Note

Section 1 of Ch. 70, Laws 1953 is compiled as sec. 89-2702.

Amendment

The 1953 amendment raised from 50% to 75% the area of land of which the owners must object before the petition may be dismissed, and from 50% to 75% in the provision which allows a hearing on the proposed alteration and/or addition when the owners of less than 75% of the land area object; substituted the words "is" for "are" and "it" for "they" in the fourth sentence following the words "alteration and/or addition" and added the next to the last sentence.

Repealing Clause

Section 3 of Ch. 70, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 70, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 25, 1953.

CHAPTER 28—DRAINAGE DISTRICTS—MISCELLANEOUS PROVISIONS

Section 89-2821. Additional powers—purpose.
89-2822. Additional powers enumerated.
89-2823. Petition for additional powers by present drainage district.
89-2824. Areas not within present districts—organization.
89-2825. Legislative purpose—liberal interpretation—cooperation—exercise of additional powers, proviso.

89-2821. Additional powers—purpose. The purpose of this act is to confer certain additional powers on drainage districts already created or to be created under the laws of the state of Montana for the purposes of cooperating with the government of the United States and landowners in flood prevention and the conservation, development, utilization and disposal of water for the further development of the economy of this state and for the promotion of the public health and welfare.

History: En. Sec. 1, Ch. 3, L. 1957.

Title of Act

An act to confer additional powers on already existing drainage districts for the purposes of flood prevention and the conservation, development, utilization and disposal of water; to provide for the creation of drainage districts for the purposes set forth in this act; and for related purposes.

89-2822. Additional powers enumerated. To the end that soil and water conservation measures may be improved, flood prevention and drainage programs strengthened, and the land and water economy of the state stabilized, the following additional powers are conferred upon presently existing drainage districts or new districts as created and established under sections 89-2201 through 89-2820 of the Revised Codes of Montana, 1947, and laws amendatory thereof and supplementary thereto:

(1) To carry out necessary measures for the prevention of floodwater and sediment damages and for the conservation, development, utilization and disposal of water; and to adopt necessary regulations, policies and procedures to accomplish these ends, subject to the approval of the district court and on proper notice to interested parties as is provided for in the general statutes pertaining to drainage districts.

(2) To cooperate and enter into agreements with, and to receive financial and other assistance from state agencies and political subdivisions of the state, other organizations created under state laws, and the government of the United States and agencies thereof, to carry out the purposes of this act; to enter into agreements with and to accept contributions from private landowners for the purposes of this act.

(3) To construct, operate, and maintain such works of improvement, including structures and related measures, as are needed to carry out their broadened purposes as set forth herein, subject to the approval of the district court and on proper notice to interested parties as set forth in the drainage district statutes.

(4) To acquire lands, easements, and rights-of-way for sites for structures and for the flowage or impoundment of waters, such acquisitions for such purposes to be accomplished in the same manner and through the same powers and procedures as provided for under the statutes presently pertaining to drainage districts.

(5) To enlarge their boundaries to permit the construction of additional needed works of improvement, or to construct additional needed works of improvement outside their boundaries, subject to approval of the district court and on proper notice to interested parties in the manner set forth in the drainage district statutes.

(6) To make assessments and issue bonds for carrying out the purposes of this act and for construction, maintaining and operating any structures or improvements established as provided herein, such assessments and bond issues to be made in the same manner and through the same procedures as under the statutes presently pertaining to drainage districts including the right to extend annual installments for repayment of construction costs over a period of not more than fifty years and subject to the approval of the district court in the same manner and on the same notice to the interested parties as in the first instance of approving assessments, bond issues, and benefits.

History: En. Sec. 2, Ch. 3, L. 1957.

89-2823. Petition for additional powers by present drainage district. Before the additional powers granted by this act shall become applicable to any presently existing drainage district in this state, the commissioners of such district shall file a petition in the district court requesting such additional powers as set forth herein, and proper notice shall be given to interested landowners in the same manner as in the first instance of creation of the district, and proceedings shall be conducted insofar as possible in accordance with the procedures set forth for determining whether or not the district shall be created in the first instance, and the district court shall render its decree or order accordingly.

History: En. Sec. 3, Ch. 3, L. 1957.

89-2824. Areas not within present districts—organization. In areas not presently within the boundaries of an existing drainage district the landowners may proceed to organize a drainage district for carrying out the purposes of this act, and such organization of such district may be carried out for said purposes according to the procedure for organization of such districts set forth in the Revised Codes of Montana, 1947, and after organization such districts shall have all the powers vested by law in such districts.

History: En. Sec. 4, Ch. 3, L. 1957.

89-2825. Legislative purpose—liberal interpretation—cooperation—exercise of additional powers, proviso. The purpose of this act is to enable existing drainage districts or newly created drainage districts as provided herein to enter into cooperative agreements and programs to carry out the purposes of Public Law 566, 83rd Congress of the United States, or other laws of the National Congress pertaining to flood prevention and the conservation, development, utilization and disposal of water. This act is to be

given a liberal construction to the end that these purposes may be carried out, and to this end all political subdivisions of the state of Montana, all agencies and departments of the state government, and all soil conservation districts are authorized to cooperate with, expend funds for, and enter into agreements with drainage districts and any agencies of the United States government for the purpose of carrying out the provisions of this act and said Public Law 566, 83rd Congress of the United States or other laws of the National Congress pertaining to flood prevention and the conservation, development, utilization and disposal of water.

Provided, however, none of the additional powers granted by this act shall be exercised except for the purpose of participating in projects or programs authorized under Public Law 566, 83rd Congress of the United States, or other laws of the National Congress pertaining to flood prevention and the conservation, development, utilization and disposal of water.

History: En. Sec. 5, Ch. 3, L. 1957.

Separability Clause

Section 6 of Ch. 3, Laws 1957 read "If any part, or parts of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

Effective Date

Section 7 of Ch. 3, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 2, 1957.

CHAPTER 30—SAGE CREEK BASIN

Section 89-3001. Authority for governor to assent to agreement between United States and Canada regarding waters of Sage Creek Basin.
89-3002. Substance of agreement.

89-3001. Authority for governor to assent to agreement between United States and Canada regarding waters of Sage Creek Basin. The governor of Montana is hereby authorized and empowered to assent, on behalf of the state of Montana, to an agreement to be entered into between the government of the United States of America and the government of Canada for, and on behalf of, the state of Montana and its citizens, and the Province of Alberta and its citizens, concerning a division of the waters of the Sage Creek Basin, the said basin being the watershed of an international stream; and, if such agreement be entered into, and such assent given, the governor of Montana is hereby authorized and empowered to take such action as may be necessary to carry the agreement into effect.

History: En. Sec. 1, Ch. 23, L. 1957.

Title of Act

An act authorizing the governor of Montana to assent on behalf of the state of Montana to an agreement to be entered into between the government of the United States of America and the government of Canada for, and on behalf of, the state of Montana and its citizens, and the Province of Alberta and its citizens, for a division between said state and said province of the waters of the Sage Creek Basin; prescribing the formula to be used for effecting the division of the subject waters; and waiving certain rights under the boundary waters' treaty signed at Washington on January 11, 1909; and providing an effective date.

89-3002. Substance of agreement. The said agreement shall in substance provide for:

1. Construction, by the Prairie Farm Rehabilitation Administration or other agency of the government of Canada, of a reservoir in Canada at

Elbow Coulee to provide capacity for approximately 7,500 acre-feet of live storage;

2. Construction, by the same agency, of a "Supply Canal to the United States" on the west side of Sage Creek to carry all of the stored water apportioned to the Montana ranchers from a point in Sage Creek below the reservoir to the point where Sage Creek crosses the international boundary. Final location of this canal will be recommended by the Canadian authorities concerned, after completion of a survey by the Prairie Farm Rehabilitation Administration;

3. Formation of a water storage society or other organization of the Canadian ranchers appropriate under Alberta laws which will be responsible for:

(a) maintenance and operation of the reservoir and of the diversion works at the head of the supply canal to the United States;

(b) apportionment of the impounded water as between the Alberta ranchers and the Montana ranchers in accordance with the formula outlined hereunder;

(c) diversion of the United States' share of the impounded water to the supply canal to the United States referred to in paragraph 2 above;

(d) provision of suitable storage apportionment and diversion records to the representative of the Montana ranchers and to the board referred to in paragraph 5 below;

(e) maintenance of Sage Creek channel between the reservoir and the point of diversion to the supply canal to the United States in a condition satisfactory to the board referred to in paragraph 5 below.

4. The water storage society or other organization mentioned in paragraph 3 to cooperate with the Montana ranchers and, as and when requested by a representative of the Montana ranchers, to release and divert to the supply canal to the United States all or part of the Montana ranchers' share of the water then impounded in the reservoir;

5. Inspection of the reservoir, channel and diversion works and the records of the storage society by an international board created by the International Joint Commission, to verify compliance with the terms of the agreement for apportionment of the stored water; said board to recommend subsequently any adjustment which may be appropriate;

6. Maintenance of the supply canal to the United States in a condition satisfactory to the board referred to in paragraph 5 above, to be the responsibility of the Montana ranchers, who will be permitted appropriate access to the canal for this purpose at all reasonable times;

7. Apportionment of water shall apply to water remaining in the reservoir at the commencement of the water year, together with the season run off impounded in the reservoir, regardless of whether the run off occurs during only on period of days or weeks or during two or more such periods. Such water shall be apportioned to the Alberta ranchers and the Montana ranchers in the following manner:

(a) If the amount of water thus available in the reservoir for apportionment during the water year is 3,750 acre-feet or less, one third thereof shall be apportioned to the Montana ranchers and two thirds to the Alberta ranchers;

(b) If the amount is more than 3,750 acre-feet but not more than 5,000 acre-feet, 1,250 acre-feet thereof shall be apportioned to the Montana ranchers and the remainder to the Alberta ranchers;

(c) If the amount is more than 5,000 acre-feet one fourth thereof shall be apportioned to the Montana ranchers and three fourths to the Alberta ranchers; provided, that if in any year the amount is more than 7,500 acre-feet, the water in excess of 7,500 acre-feet shall be made available to the Alberta ranchers if they can use it.

If the capacity of the reservoir for live storage should prove to be less than 7,500 acre-feet, the amounts of water stated above will be reduced proportionately.

8. Measurement of diversions to be made at the point of diversion from Sage Creek to the supply canal to the United States;

9. Reservoir losses, defined as "changes in reservoir storage which are unexplained by inflows and deliveries," and physical losses in Sage Creek channel between the reservoir and the point of diversion to the supply canal to the United States, to be shared in the same proportions as the water impounded in the reservoir;

10. All waters in Sage Creek Basin in Alberta, other than the Montana ranchers' share of water impounded in the reservoir calculated in accordance with the formula outlined in paragraph 7 above, to be available for use in Alberta;

11. The flow of water across the international boundary in the Sage Creek Basin not be obstructed in Montana in a manner which causes or is likely to cause damage in Alberta;

12. In consideration of the apportionments of water to be made pursuant to the aforementioned arrangements, the state of Montana and the Montana ranchers to waive any and all rights they might otherwise assert, under Article II of the Boundary Waters' Treaty of 1909, respecting the waters of the Sage Creek Basin.

History: En. Sec. 2, Ch. 23, L. 1957.

Effective Date

Section 3 of Ch. 23, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 19, 1957.

CHAPTER 31—WELLS

Section 89-3101. Drilling or digging of wells—filing report in county—contents.
89-3102. Report to be in addition to other reports required.
89-3103. County to transmit copies to bureau of mines and geology and state engineer.

89-3101. Drilling or digging of wells—filing report in county—contents. Every person, firm, or corporation who shall drill or dig, or shall cause to be drilled or dug, a water well, of any type whatsoever, within the state of Montana shall, within sixty (60) days after the completion of such well, file as a permanent record in the office of the clerk and recorder of the county wherein the well is located, on a form to be furnished by the state bureau of mines and geology, as hereinafter in this act provided, the following information: (a) the name and address of the owner of the land where the well is located, (b) the date the drilling commenced and

the date the well was completed, (c) the name and address of the driller of the well, (d) the approximate location of the well by legal description, (e) the kind and size of the well and other works or excavation in connection therewith, (f) the capacity of the well in gallons per minute or cubic feet per second, by pumping or by natural flow, (g) the proposed use of the water from the well, (h) the approximate surface elevation at the wellhead, (i) the casing record of the well, (j) the drilling log showing the character and thickness of all formations penetrated, (k) the depth to which the well is drilled, and (l) the depth to the water horizon and the height to which water will rise in the well.

History: En. Sec. 1, Ch. 58, L. 1957.

Title of Act

An act to require all persons, firms, and corporations drilling or digging water wells or causing water wells to be drilled or dug in the state of Montana to file with the clerk and recorder of the county in which such well is located information as to location, size, type, depth, water level and other information concerning such well and requiring that such information be filed with the state bureau of mines and geology and the state engineer; containing a repealing clause.

89-3102. Report to be in addition to other reports required. The report and information required to be filed by section 1 [89-3101] of this act shall be in addition to all other reports and information which the drillers of water wells in the state of Montana are required by law to file with agencies of the state of Montana.

History: En. Sec. 2, Ch. 58, L. 1957.

89-3103. County to transmit copies to bureau of mines and geology and state engineer. The report and information required to be filed by section 1 [89-3101] of this act shall be filed on forms prescribed by the state bureau of mines and geology and furnished by the state bureau of mines and geology to the clerk and recorder of the various counties, and such report and information shall be filed in triplicate. The original of such report and information shall be kept as a permanent record of the office of the clerk and recorder of the county wherein the well is located. The clerk and recorder of such county shall transmit one copy of such report and information to the state bureau of mines and geology and one copy to the state engineer.

History: En. Sec. 3, Ch. 58, L. 1957.

Repealing Clause

Section 4 of Ch. 58, Laws 1957 repealed all acts and parts of acts in conflict therewith.

TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME—MONEY

Chapter 1. Standard weights and measures—state sealer of weights and measures, 90-101, 90-125, 90-126, 90-129, 90-131, 90-132, 90-136, 90-137, 90-146, 90-147.
2. Apples, grades and boxes, 90-201.
3. Bread—standard weight and loaf, 90-301, 90-301.1.

CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER OF WEIGHTS AND MEASURES

Section 90-101. What are standards.
90-125. Duty as to visitation and inspection—certificate—acts forbidden.
90-126. Penalty for using false weights—seals.
90-129. Authority to inspect weighing and measuring devices and penalty for tampering with seal.
90-131. Inspection of track scales for weighing in carload lots—scale platforms—penalty for short weights.
90-132. Weight of commodities to be indicated on containers—penalties.
90-136. Prohibition of use of weights pending adjustment.
90-137. Condemnation of weights and measures not standard.
90-146. Penalty for obstructing sealer.
90-147. State sealer to promulgate rules.

90-101. (4212) **What are standards.** The weights and measures accepted and used by the bureau of standards of the United States, except as hereinafter provided, are the lawful standard weights and measures of the state. The state sealer of weights and measures may establish tolerances and specifications for commercial weighing and measuring apparatus similar to the tolerances and specifications recommended by such bureau of standards. Any person violating such standards, tolerances, or specifications shall be guilty of a misdemeanor.

History: En. Sec. 3120, Pol. C. 1895; re-en. Sec. 2009, Rev. C. 1907; re-en. Sec. 4212, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1945; amd. Sec. 1, Ch. 143, L. 1951.

Amendment

The 1951 amendment omitted the words "at the present time" which followed the words "United States" in the first sentence and substituted the word "and" for "in" following "establish tolerances" in the second sentence.

Cross-Reference

Oleomargarine, weights and packages, secs. 27-511, 27-513.

90-125. (4238) **Duty as to visitation and inspection—certificate—acts forbidden.** Said state sealer of weights and measures, or his deputies, shall visit the various counties, cities and towns in the state, and in the performance of his duties, he, or his deputies, shall inspect weights, measures, scales and weighing devices which are used for buying or selling goods, wares, merchandise, or other commodities, and for public weighing, and shall test or calibrate weights and measures, weighing devices or apparatus used as test standards in the state. He, or his deputies, shall, at least once a year, test all scales, weights and measures used in checking the receipts or disbursements of supplies of every state institution, and shall report in writing his findings to the executive officer of the institution concerned. The state sealer of weights and measures shall prepare a certificate of suitable size which shall be issued to the owner or person in charge after inspection, and a proper seal to be attached or affixed to all scales and weighing devices, measures or measuring devices so tested.

Said certificates and seals shall bear the signature of the state sealer of weights and measures, or shall be signed by a deputy sealer of weights and measures. Such certificates shall be numbered in consecutive order, and shall show the date of issuance. It shall be unlawful for any person to deface, mutilate, obscure, conceal, efface, cancel or remove any seal, stamp or mark provided for by this act, or cause or permit the same to be done without the written consent of the state sealer of weights and measures or his deputies.

History: En. Sec. 4, Ch. 34, L. 1911; amd. Sec. 4, Ch. 83, L. 1913; re-en. Sec. 4238, R. C. M. 1921; amd. Sec. 6, Ch. 146, L. 1939; amd. Sec. 3, Ch. 110, L. 1945; amd. Sec. 1, Ch. 174, L. 1949; amd. Sec. 2, Ch. 143, L. 1951.

Compiler's Note

Chapter 143 of Laws 1951 in amending this section made no reference to the 1949 amendment.

Amendments

The 1949 amendment added a first sentence which read, "The state sealer shall prescribe and adopt such rules and regulations for the installation of heavy duty scales as he may deem necessary to carry out the provisions of this chapter, and he may change or modify or amend any or all rules whenever deemed necessary."

The 1951 amendment omitted the sentence added by the 1949 amendment, substituted "weights, measures, scales and weighing devices" for "weights and measures and balances" in the first sentence, substituted "scales and weighing devices" for "weights and measures or measuring devices" in the third sentence, omitted the words "any such certificate" following "remove" in the last sentence, omitted the words "or to violate any of the provisions of this act" following "same to be done" and substituted "sealer of weights and measures or his deputies" for "sealer of weights or that of the deputy who inspected the weighing device" at the end of the section.

Repealing Clause

Section 2 of Ch. 174, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 174, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

90-126. (4240) **Penalty for using false weights—seals.** From and after the passage and approval of this act it shall be unlawful for any person or persons, firm, or co-partnership, corporation, or association of persons engaged in the trade of buying or selling, purchasing or disposing of, or dealing in any merchandise or commodities to any person, or persons in the state of Montana, to sell or purchase by weight or by measure, without first having had the weights and measures, scales or measuring devices used by them, or in their possession, for the purpose of determining the amount or quantity of any article or articles of merchandise, tested and a seal of approval attached thereto by the state sealer of weights and measures, or by his deputies. Such seal shall be attached or placed in a conspicuous place upon such weighing or measuring device. Any person or persons making use of weighing or measuring devices subject to this act must report to the sealer of weights and measures or his deputies, in writing, the number and location of said weighing or measuring device and must promptly report the installation of any new weighing or measuring device. Any person or persons using any weight or measure, or scale or other measuring device after the passage and approval of this act, or annually thereafter, which has not been tested as provided by this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and will be subject to a fine of not less than ten dollars ($10.00) and no more than one hundred dollars ($100.00).

History: En. Sec. 6, Ch. 34, L. 1911; amd. Sec. 6, Ch. 83, L. 1913; re-en. Sec. 4240, R. C. M. 1921; amd. Sec. 7, Ch. 146, L. 1939; amd. Sec. 3, Ch. 143, L. 1951; amd. Sec. 1, Ch. 157, L. 1957.

Amendments

The 1951 amendment inserted the words "of approval" following "seal" near the end of the first sentence.

The 1957 amendment inserted the words "or measuring" each time they appear in the third sentence and added the penalty provisions to the end of the section.

Repealing Clause

Section 2 of Ch. 157, Laws 1957 repealed all acts or parts of acts in conflict therewith.

90-129. (4243) **Authority to inspect weighing and measuring devices and penalty for tampering with seal.** The state sealer of weights and measures, or his deputies shall have power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of any kind, instruments or mechanical devices for measurement, and the tools, appliances, or accessories connected with any and all of such instruments or measurements, used, kept for use, sold, offered for sale, or kept for sale, or employed within the state by a proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, articles for distribution or consumption, offered or submitted by such persons for sale, hire, or award. Provided also, that the state sealer of weights and measures, or his deputies, shall at least once a year and as often as may be deemed necessary, try and prove all computing scales and other devices having a device for indicating or registering the price as well as the weight of the commodity offered for sale. Computing devices, which may be used by any person at any place within this state, shall be tested as to the correctness of both weight and arithmetical values indicated by them.

The state sealer of weights and measures, or his deputies shall have in addition to the above mentioned powers, the power to inspect and classify all meters, measuring, gauging or testing devices and apparatus used in connection with the wholesale and retail distribution of petroleum and petroleum products, and may prescribe suitable standards of accuracy for such meters and measuring devices, conformable to the standards fixed by the United States bureau of standards for such devices.

It shall be unlawful to remove any state seal or rejection notice placed on the adjustment of any gasoline pump, meter, or petroleum measuring device and scale such as, but not limited to, retail pumps, wholesale meters, tank markers and measuring cans, except by repairmen certified by the state sealer of weights and measures, or where they have received a temporary permit from the department of agriculture. Any person found guilty of violating this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

History: En. Sec. 9, Ch. 34, L. 1911; amd. Sec. 9, Ch. 83, L. 1913; re-en. Sec. 4243, R. C. M. 1921; amd. Sec. 10, Ch. 146, L. 1939; amd. Sec. 2, Ch. 158, L. 1953; amd. Sec. 1, Ch. 131, L. 1955; amd. Sec. 1, Ch. 89, L. 1957.

Compiler's Note

Section 2 of Ch. 131, Laws 1955 is compiled as section 60-201.

Amendments

The 1953 amendment added the second and third paragraphs.

The 1955 amendment added the third paragraph above and deleted a former third paragraph which read "It shall be the duty of each person, firm, partnership or corporation owning or operating any of the above enumerated measuring devices used in the wholesale or retail distribu-

tion of petroleum and petroleum products to pay to the state sealer of weights and measures, or his deputies, at time of inspection the following inspection fee: Petroleum pumps (filling stations, etc.) one dollar ($1.00): vehicle tank meters and bulk meters two and one-half inch (2½") and under five dollars ($5.00): petroleum bulk meters over two and one-half inch (2½") eight dollars ($8.00)."

The 1957 amendment in the third paragraph inserted the words "or where they have received a temporary permit from the department of agriculture" and increased the minimum and maximum fine from $10 and $25 to $25 and $100.

Repealing Clauses

Section 1 of Ch. 158, Laws 1953 specifically repealed sec. 60-218.

Section 2 of Ch. 89, Laws 1957 repealed all acts or parts of acts in conflict therewith.

90-131. (4245) **Inspection of track scales for weighing in carload lots—scale platforms—penalty for short weights.** (a) All track scales used for the purpose of weighing freight in carload lots within the state shall be under the control and direction and jurisdiction of the state sealer of weights and measures, and subject to inspection by him, or his deputies.

(b) The state sealer of weights and measures, or his deputies, shall have power either on their own motion or on complaint being made, to determine whether any petroleum measuring device or scales are defective or inefficient, or whether the time, manner, or method of using same is unreasonable, ineffective, or unjust, and shall have power to condemn any petroleum measuring device or scales found to be defective or inefficient, and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule, or regulation as may be deemed necessary or advisable. No scale platform shall be allowed to extend over the manufacturer's specifications.

(c) Any person or persons who shall sell, or direct or permit any person or persons in his or their employ to sell any commodity or article of merchandise and make or give any false or short weight or measure, or any person or persons owning or keeping, or having charge of any scales or steelyards for the purpose of weighing livestock, hay, grain, coal, or other articles, who shall report any false or untrue weight, whereby any other person or persons may be defrauded or injured, shall be deemed guilty of a misdemeanor, and shall be answerable to the party defrauded or injured in double damages.

History: En. Sec. 11, Ch. 83, L. 1913; re-en. Sec. 4245, R. C. M. 1921; amd. Sec. 12, Ch. 146, L. 1939; amd. Sec. 4, Ch. 110, L. 1945; amd. Sec. 1, Ch. 84, L. 1957.

Amendment

The 1957 amendment inserted the words "petroleum measuring device or" both times they appear in subd. (b).

Repealing Clause

Section 2 of Ch. 84, Laws 1957 repealed all acts or parts of acts in conflict therewith.

90-132. (4246) **Weight of commodities to be indicated on containers—penalties.** It shall be unlawful for any person or persons, association, or corporation, to sell or offer for sale in this state any commodity or article of merchandise in a package or container, without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure, or numerical count of its contents, designated, where not otherwise provided, by lettering of at least one-ninth (1/9) inch in height (8 point type). Provided, that nothing in this section shall prevent the sale of a commodity within the provisions of this act when such sale is made from bulk and the quantity is weighed, measured,

or counted for the immediate purpose of such sale; provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream, offered for sale or sold in packages or containers at a price of ten cents (10c) or less per such package or to commodities or articles of merchandise in packages or containers which are sold by the aggregate net weight of the contents thereof.

1. It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure, or numerical count, except where the parties otherwise agree. Contracts for work done, or anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid. It shall be unlawful for any person to sell solid substances by liquid measure.

2. It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance, or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise, upon which scale or device the graduations or indications are falsely or inaccurately placed, either as to weight or price, or to use any computing scale having a horizontal registering bar with a barrel computing device, unless such scale is adjusted to register the correct weight from all angles of vision, and the view on the customer's side shall never be, in any manner, obstructed. The selling and delivering of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vendor that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the stated weight, measure or quantity for individual packages not to exceed three percent (3%) is permissible; provided, that the variation is as often above as below the weight, measure or quantity stated.

3. Any person, who by himself, or his employee or as a proprietor or manager, shall refuse to exhibit any article, commodity or the container of any commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the state sealer of weights and measures, or his deputies, for the purpose of allowing the same to be tested and proved as to the quantity contained therein as in this act provided, shall be guilty of a misdemeanor.

4. The term container used in this act is hereby defined to be any receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put up for sale, or to be offered or exposed for sale. No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed as to facilitate the perpetration of deception or fraud. The state sealer of weights and measures, or his deputies, may seize any container which facilitates the perpetration of deception or fraud. By order of a court having jurisdiction the containers seized shall be condemned and destroyed or released upon such conditions as the court in its discretion may impose, to insure against their use in violation of this section.

5. There are hereby established the following standard net weights for all berry containers, or hallocks in which strawberries, blackberries, currants, gooseberries, or any other berries, except red or black raspberries, are sold or offered for sale in this state:

(a) Pint hallocks or containers shall be 33.6 cubic inches in capacity and the contents thereof shall have a net minimum weight of twelve (12) ounces.

(b) Quart hallocks or containers shall be 67.2 cubic inches in capacity and contents thereof shall have a net minimum weight of twenty-four (24) ounces. Red or black raspberries shall be marketed in either pint hallocks or one-half (½) pint containers or hallocks of 16.8 cubic inches capacity and minimum weight of eight (8) ounces. The sale of, or having in possession for sale, any strawberries, red or black raspberries, blackberries, currants, gooseberries or any other berries in containers or hallocks not complying with the provisions of this act shall be a misdemeanor punishable, upon conviction, by a fine of not less than ten dollars ($10.00), nor more than twenty-five dollars ($25.00).

History: En. Sec. 12, Ch. 83, L. 1913; re-en. Sec. 4246, R. C. M. 1921; amd. Sec. 13, Ch. 146, L. 1939; amd. Sec. 1, Ch. 130, L. 1951.

Amendment

The 1951 amendment omitted the words "red or black raspberries" which followed "strawberries" in the first paragraph of subdivision 5 and inserted the words "except red or black raspberries" in the same paragraph and inserted the second sentence in paragraph (b) of subdivision 5.

Repealing Clause

Section 2 of Ch. 130, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 130, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

90-136. (4250) **Prohibition of use of weights pending adjustment.** If any weights, measures, scales or balances can be readily adjusted by such means as the sealer of weights and measures, or his deputies, may have at hand, he, or they may adjust and seal them, but if they can not be readily adjusted, he, or they, shall affix to such weights, measures, scales or balances a notice forbidding their use until he, or they are satisfied they have been so adjusted as to conform with the standard. It shall be unlawful for any person to remove such notice, without the written consent of the state sealer of weights and measures or his deputy. And in case said notice is removed without such written consent, the owner,

manager, proprietor, lessee or anyone in active control of the business in connection with which said weights, measures, scales or balances are used after such removal of said notice, shall be deemed guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 15, Ch. 34, L. 1911; amd. Sec. 16, Ch. 83, L. 1913; re-en. Sec. 4250, R. C. M. 1921; amd. Sec. 17, Ch. 146, L. 1939; amd. Sec. 1, Ch. 27, L. 1941; amd. Sec. 4, Ch. 143, L. 1951.

Amendment

The 1951 amendment substituted "state sealer of weights and measures or his deputy" at the end of the second sentence for "officer affixing the same, unless proper repairs have been made" and omitted the words "before proper repairs have been made" following "without such written consent" in the third sentence.

90-137. (4251) **Condemnation of weights and measures not standard.** All weights, measures, and balances which cannot be made to conform to the standard weights, and measures as herein provided shall be stamped "condemned" or "C. D." by the state sealer of weights and measures, or his deputies, or the state sealer of weights and measures, or his deputies, may confiscate and seize, without warrant, any incorrect weight, measure, weighing or measuring device or part thereof which does not conform to the state standards or specifications, or which in his or their best judgment cannot be repaired. It shall be unlawful to offer or expose for sale, sell, use or possess a faulty scale, weight or measure, or any scale or measure used in buying or selling of any commodity or things and which has been rejected by the state sealer of weights and measures or his deputies. Scales commonly known as "family scales" or scales marked when sold "not legal in trade" shall not be deemed standard and shall be subject to such seizure. The state sealer of weights and measures, or his deputies, shall not be liable to the owner of the property for damages caused by such seizure. All persons owning coin weight scales shall place their name and address on the back of the scale. In all cases where inspection fees are not paid on coin weight scales, the same may be confiscated by the state sealer of weights and measures, or his deputies. Heavy duty scales of the pitless type shall not be sold or installed in any stock yards or for any other public weighing; provided that this shall not apply to pitless scales used by the highway department for check-weighing.

History: En. Sec. 16, Ch. 34, L. 1911; amd. Sec. 17, Ch. 83, L. 1913; re-en. Sec. 4251, R. C. M. 1921; amd. Sec. 18, Ch. 146, L. 1939; amd. Sec. 5, Ch. 110, L. 1945; amd. Sec. 5, Ch. 143, L. 1951.

Amendment

The 1951 amendment substituted the word "or" for "and" following "standards or specifications" near the end of the first sentence, and added the last sentence.

90-146. (4260) **Penalty for obstructing sealer.** Any person who neglects or refuses to produce for the state sealer of weights and measures, or his deputies, all weights, measures, balances or petroleum measuring devices in his possession and used in trade, or on his premises, or refuses to permit the said officers to examine the same, or obstructs the entry of said officers, or otherwise obstructs or hinders any official under this law shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

History: En. Sec. 25, Ch. 34, L. 1911; re-en. Sec. 26, Ch. 83, L. 1913; re-en. Sec. 4260, R. C. M. 1921; amd. Sec. 26, Ch. 146, L. 1939; amd. Sec. 1, Ch. 90, L. 1957.

Amendment

The 1957 amendment inserted the words "or petroleum measuring devices" and added at the end of this section the words "and shall be subject to a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00)."

Repealing Clause

Section 2 of Ch. 90, Laws 1957 repealed all acts or parts of acts in conflict therewith.

90-147. (4261) **State sealer to promulgate rules.** The state sealer of weights and measures is hereby authorized to make and promulgate such rules and regulations in conformity with this act as may be proper and necessary to carry out the provisions of this act in a uniform manner. Such rules and regulations when adopted by the state sealer of weights and measures shall have the same force and effect as if provided for in this act.

History: En. Sec. 28, Ch. 34, L. 1911; re-en. Sec. 27, Ch. 83, L. 1913; re-en. Sec. 4261, R. C. M. 1921; amd. Sec. 27, Ch. 146, L. 1939; amd. Sec. 6, Ch. 143, L. 1951.

Amendment

The 1951 amendment inserted the words "and promulgate," omitted the words "for the guidance and direction of his deputies" which followed "rules and regulations" in the first sentence and substituted "if" for "as" preceding "provided for in this act" at the end of the section.

Repealing Clause

Section 7 of Ch. 143, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 143, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

CHAPTER 2—APPLES, GRADES AND BOXES

Section 90-201. Grades of apples.

90-201. (4265.1) **Grades of apples.** The standard grades of apples for the state of Montana shall be: "Extra fancy or first grade", "Fancy or second grade", "C", "Combination grade", and "Hail grade".

(a) "Extra fancy or first grade", shall consist of apples of one variety which are mature, hand picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russeting, drought spot, hail marks, visible water-core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade.

(b) "Fancy or second grade" shall consist of apples of one variety which are mature, hand picked, clean, fairly well formed, sound, free from visible water-core, broken skin, and from damage caused by bruises, limbrub, spray burns, sunburn, russeting, drought spot, hail marks, apple scabs, diseases and insect injury.

(c) "C" grade shall consist of apples of one variety which are mature, hand picked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limbrub, russeting, drought spot, hail marks, apple scab, diseases and insect injury, and must have fifteen per centum (15%) of color requirements characteristic of the variety. The word "choice" must not be used in connection with this grade.

(d) Cull apples shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of extra fancy or first grade, fancy or second grade, or of "C" grade and shall be marked

in block letters not less than one [1] inch in height on both ends of box "culls".

(e) "Combination grade". When "extra fancy or first grade" and "fancy or second grade" apples are packed together, the boxes must be marked "combination extra fancy or first grade and fancy or second grade". This combination grade must contain at least twenty-five per centum (25%) of apples which belong to the higher grade in the combination.

(f) "Hail grade" shall meet all requirements of "Extra fancy", "Fancy grade" except hail marks. Such hail marks must not materially deform or disfigure the fruit or affect more than one-tenth (1/10) of the surface in the aggregate where skin has not been broken. Provided, that unhealed hail marks shall not be permitted and not more than an aggregate area of one-half (½) inch shall be allowed for well-healed hail marks where the skin has been broken.

(g) No apples smaller than two and one-fourth (2¼) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than one [1] inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(h) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed.

History: En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951.

Amendment

The 1951 amendment substituted "Hail grade" for "XFFC," omitted a second sentence from paragraph (e) which read "When 'fancy or second grade' and 'C' grades are packed together, the boxes must be marked 'combination fancy or second grade and, "C"',' substituted "This combination grade" for "Combination grades" and substituted present paragraph (f) for a paragraph prescribing "XFFC" grade as a combination of "extra fancy or first grade" not less than 20%, "fancy or second grade" fifty percent and "C" grade not more than 30%.

Repealing Clause

Section 2 of Ch. 43, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

Section 90-301. Weight requirements for sale of bread.
90-301.1. Definitions and standards governing manufacture of bakery products.

90-301. (4273) **Weight requirements for sale of bread.** From and after the passage of this act it shall be unlawful for any person or persons, association, co-partnership or corporation to manufacture for retail or wholesale trade, or to sell bread, unless the same shall be of the following weights, which shall be net weights twelve hours after baking: "Standard loaf," which shall weigh not less than fifteen (15) ounces and not more than seventeen (17) ounces in an individual loaf, provided, however, that the average weight of not less than twenty-five loaves of a standard loaf shall be not less than sixteen ounces; "Standard large loaf," which shall weigh not less than twenty-two and one-half (22½) ounces and not more than twenty-five and one-half (25½) ounces in an individual loaf, pro-

vided, however, that the average weight of not less than twenty-five loaves of a standard large loaf be not less than twenty-four ounces; provided, however, that larger loaves having weights that are multiples of the mean weight of a standard loaf weight may be manufactured and sold to restaurants, caterers, sandwich makers, hotels, commissaries, institutions, or other public eating places, with the total tolerance in excess or deficiency for each such larger weight loaf not to exceed two (2) ounces. This act shall not apply to rolls or to fancy bread weighing less than one-quarter of a pound.

History: En. Sec. 1, Ch. 155, L. 1919; re-en. Sec. 4273, R. C. M. 1921; amd. Sec. 2, Ch. 252, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 3 of Ch. 252, Laws 1957 repealed sections 90-302 and 90-303, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict therewith.

90-301.1. Definitions and standards governing manufacture of bakery products. The state board of health is authorized and directed to adopt definitions and standards governing the manufacture of bakery products. Such definitions and standards shall be equal to those recommended by the federal food and drug administration under the federal food, drug and cosmetic act when such federal standards exist. This legislation shall in no manner affect food and drug legislation now in existence for other foods.

History: En. Sec. 1, Ch. 252, L. 1957.

90-302, 90-303. (4274, 4275) **Repealed.**

Repeal

These sections (Secs. 2, 3, Ch. 155, L. 1919), relating to conditions under which bread may be sold, and the return or repurchase of bread, were repealed by Sec. 3, Ch. 252, Laws 1957.

CHAPTER 4—TIME

90-407. (10707) **Computation of time.**

Construction

In 1864 the First Legislative Assembly of the Territory of Montana by the enactment of section 430 of the Bannack Statutes at page 130 incorporated into the law of this jurisdiction the common-law rule and formula for computing time by excluding the first day and including the last which at all times since has been and now is the written law of this jurisdiction. State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Pericich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

The legislature, by this section, has prescribed the one and only lawful rule or formula for computing both the maximum and the minimum number of days designated in section 75-1606. It computes by "excluding the first day and including the last" day. State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Pericich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

In computing whether a nomination was made at least 40 days before the day of election, resort must be had to this section which requires that in computing time you exclude the first day and include the last day; thus where date of election was April 3, 1954 the last day for nominating meetings was February 22. State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268

P 558, Novack v. Pericich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

Removal of Public Officer

In determining time under section 94-5516 which provides that party charged must be cited to appear "not more than ten nor less than five days from the time the accusation was presented" in action to remove public officer both the first and last day should be excluded. State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, overruled in State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998.

References

Cited or applied in Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339, 341; First National Bank of Missoula v. Mercer, — M —, 279 P 2d 695, 697.

TITLE 91—WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP

Chapter 1. Wills—execution and revocation, 91-104 to 91-104.2.
4. Succession, 91-423 to 91-430.
5. Escheated estates—inheritance by nonresident aliens—disposal of unclaimed property, 91-502, 91-510, 91-512, 91-520, 91-521.
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31. Mortgaging and leasing real estate, 91-3102, 91-3108.
38. Determination of heirship and interest in estate, 91-3801, 91-3802.
39. Final distribution of estate—discharge of executor or administrator, 91-3901.
44. Inheritance tax, 91-4402, 91-4405, 91-4407, 91-4414, 91-4415, 91-4421, 91-4423, 91-4430.
47. Guardians of insane and incompetent persons, 91-4704.
48. Guardianship of incompetent veterans, minors, and other beneficiaries of the veterans administration, 91-4818.
49. Guardian's powers and duties, 91-4911.

CHAPTER 1—WILLS—EXECUTION AND REVOCATION

Section 91-104. Who may take by will.
91-104.1. Act not to repeal, restrict, qualify or limit, the provisions of sections 91-105 and 91-106.
91-104.2. Application to estates remaining undistributed at the time act goes into effect.

91-103. (6976) Will, or part thereof, procured by fraud.

Codicil as validating will or codicil which was invalid or inoperative at time of its purported execution. 21 ALR 2d 821.

Judgment denying validity of will because of undue influence, lack of mental capacity, or the like, as res judicata as to validity of another will, deed, or other instrument. 25 ALR 2d 657.

91-104. (6977) **Who may take by will.** A devise or a bequest, or both, or other testamentary disposition may be made to:

(a) Any natural person capable of taking the property so disposed of, or to any one or more of any of the following:

(b) To the United States of America, to any instrumentality of the United States of America, to the state of Montana, to any county in and of the state of Montana, and to municipal corporations in and of the state of Montana; or,

(c) To religious congregations, or churches, incorporated or unincorporated, including religious corporations sole; or,

(d) To unincorporated, benevolent, charitable, scientific, literary, educational or fraternal societies, associations or lodges, or to branches, chapters and units of any thereof, and to charities; or,

(e) To corporations heretofore or hereafter formed for benevolent, charitable, scientific, literary, educational, or fraternal purposes, or any thereof, or for hospital or sanitarium purposes; or,

(f) To corporations heretofore or hereafter formed for the operation and conduct of hospitals, or home or homes, or facilities, for the care of aged, sick or infirm adults, or for the care and custody of children, including children born out of wedlock, orphans, sick, crippled, infirm, dependent, neglected or abandoned children and minors; or directly to a hospital, home or homes by name or other description, and such devises or bequests to or for a hospital, home or homes, shall be construed to apply to the corporation owning or operating the same, or to the board of trustees or directors (however designated) of hospitals, home or homes, owned or operated by nonincorporated organizations or associations, and in any case for the benefit of the hospital, home or homes, as an institution and its humanitarian services; or,

(g) To corporations heretofore or hereafter formed primarily for the public preservation of forests and natural scenery; or,

(h) To corporations heretofore or hereafter formed to acquire, maintain or operate public libraries, public museums, or public art galleries, or historical sites or areas, or for public playgrounds, or recreation areas, or for other public purposes; and any one or more of any of such persons, governments, governmental agencies, religious congregations or churches (incorporated or unincorporated, including religious corporations sole), unincorporated associations, societies, lodges, or corporations heretofore or hereafter formed, mentioned or referred to in clauses (a) through (h) above, are hereby declared competent to take and receive property of all kinds by devise, bequest, or any other form of testamentary disposition.

Any one or more of the foregoing, whether incorporated or unincorporated, may take, accept and receive gifts, grants and donations by any other lawful means.

History: En. Sec. 437, p. 349, L. 1877; re-en. Sec. 437, 2nd Div. Rev. Stat. 1879; re-en. Sec. 437, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1722, Civ. C. 1895; re-en. Sec. 4725, Rev. C. 1907; re-en. Sec. 6977, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1955. Cal. Civ. C. Sec. 1275. Based on Field Civ. C. Sec. 546.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Power and capacity of bank to take devise or bequest. 8 ALR 2d 454.

Nonreligious, noneducational, or noncharitable trust, validity of testamentary gift to. 8 ALR 2d 614.

Felonious killing of testator as affecting slayer's rights as beneficiary under will. 26 ALR 2d 960.

Right of witness to a noncupative will to take as beneficiary thereunder. 28 ALR 2d 796.

Legality of testamentary gift to illegitimate. 34 ALR 2d 10.

91-104.1. Act not to repeal, restrict, qualify or limit, the provisions of sections 91-105 and 91-106. Nothing herein contained shall be construed to repeal, restrict, qualify or limit, the provisions of sections 91-105 and 91-106, Revised Codes of Montana, 1947, referring to the state of Montana and its institutions, and enabling the state and its institutions to take by testamentary disposition, devise, bequest, gift or grant, and enabling any person over the age of eighteen (18) years to make donations, gifts, grants, bequests, devises and testamentary dispositions to the state of Montana and its institutions, as in said sections 91-105 and 91-106, Revised Codes of Montana, 1947, set forth.

History: En. Sec. 2, Ch. 173, L. 1955.

91-104.2. Application to estates remaining undistributed at the time act goes into effect. This act is hereby expressly declared to be retroactive to the extent that it shall apply to all estates which remain undistributed at the time of the effective date of this act.

History: En. Sec. 3, Ch. 173, L. 1955.

Repealing Clause

Section 4 of Ch. 173, Laws 1955 read "all acts and parts of acts in conflict herewith are hereby repealed, except as herein preserved."

Effective Date

Section 5 of Ch. 173, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

91-107. (6980) Written will, how to be executed.

Attestation Clause

Where the attestation clause is regular it presents a prima facie case of the due execution of the will which the court is entitled upon a proper showing to hold prevails over the testimony of the witnesses to the contrary. This is particularly true where the experience and familiarity on the part of the testator with the requisites of the execution of a will exist. In re Swords' Estate, — M —, 284 P 2d 674, 677.

The court may accept statements in the attestation clause as against the mere words of the attesting witnesses to the contrary. In re Swords' Estate, — M —, 284 P 2d 674, 678.

Construction

This section does not direct that the testator must sign or acknowledge his signature to the subscribing witnesses at a time when both such witnesses are present at the same time. Neither does the section direct that the subscribing witnesses must sign the will at a time when both are present or in the presence of each other. To hold otherwise is to read into the section a requirement that is not there and was not written into such section by the legislators who enacted it into law. In re Woodburn's Estate, 128 M 145, 273 P 2d 391, 394.

The purposes of a statute requiring witnesses to a will are fully met and satisfied when this section is interpreted and construed to permit a testator to sign or acknowledge his will to the subscribing witnesses separately, and such witnesses to sign their names while not in the presence of each other. In re Woodburn's Estate, 128 M 145, 273 P 2d 391, 395.

Operation and Effect

A power of attorney to a physician to perform all medical services for decedent for which he was to receive $2,000, any portion of such amount unpaid on her death to be paid by her executor, was invalid unless executed in compliance with this section. Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 597.

Effect of testator's attempted physical alteration of will after execution. 24 ALR 2d 514.

Interlineations and changes as appearing on face of will. 34 ALR 2d 619.

Validity of will written on disconnected sheets. 38 ALR 2d 477.

91-108. (6981) Definition of a holographic will.

Operation and effect

An instrument which meets all the requirements of a holographic will under this statute is sufficient to transfer real estate in Montana upon probate. In re Gift's Estate, 125 M 95, 232 P 2d 328, 331.

A letter, written some five years after the execution of a will, in which the deceased states that he wants his son to be administrator and in which no reference was made of the prior will was not a holographic will nor was it a codicil to decedent's earlier formal will. In re Hansen's Estate, 126 M 522, 254 P 2d 1073.

Testamentary Intent

Held, that the letter and surrounding circumstances showed that the decedent had testamentary intent necessary for a valid holographic will. In re Van Voast's Estate, 127 M 450, 266 P 2d 377. (See, however, dissenting opinions, 127 M 450, 266 P 2d 377 at 380 and 389.)

Place of signature of holographic wills. 19 ALR 2d 926.

Validity of will written on disconnected sheets. 38 ALR 2d 477.

91-115. (6988) Will made out of state.

References

Cited or applied in In re Gift's Estate, 125 M 95, 232 P 2d 328, 332.

91-117. (6990) Republication by codicil.

Letter

A letter, written some five years after execution of a will, in which the deceased states that he would like for his son to be administrator and the letter makes no reference whatever to any prior will, such letter cannot be a codicil to the prior will. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

91-122. (6995) Written will—how revoked.

Operation and Effect

Decedent's will was not revoked by a later letter to his son in which he states that he wants his son to be administrator. The letter made no suggestion or declaration of a revocation of his prior will, nor is there any reference thereto. No attempt was made to comply with the provisions of section 91-125 and this section. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

91-124. (6997) Revocation of duplicate.

Destruction or cancelation of one copy of will executed in duplicate, as revocation of other copy. 17 ALR 2d 805.

91-125. (6998) Revocation by subsequent will.

Operation and Effect

Decedent's will was not revoked by a later letter to his son in which he states that he wants his son to be administrator. The letter made no suggestion or declaration of a revocation of his prior will nor is there any reference thereto. No attempt was made to comply with the provisions of section 91-122 and this section. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

91-127. (7000) Revocation by marriage and birth of issue.

Adoption of child as revoking will. 24 ALR 2d 1085.

Wills: Revocation as affected by invalidity of some or all of dispositive provisions of later codicil. 28 ALR 2d 926.

91-128. (7001) Effect of marriage of a man on his will.

Second Marriage

Where the public policy of this state does not prevent the recognition of a Nevada divorce, the Nevada decree is not subject to collateral attack, and a second marriage performed in this state revokes an existing will. In re Anderson's Estate, 121 M 515, 194 P 2d 621.

91-129. (7002) Effect of marriage of a woman on her will.

Remarriage of woman after death of or divorce from former husband as revoking will executed during former marriage. 9 ALR 2d 510.

91-135. (7008) After-born child, unprovided for, to succeed.

References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

91-136. (7009) Children or issue of children of testator, etc.

Operation and Effect

This section can have no application unless it appears from the will that testatrix unintentionally omitted to provide for the children or the issue of a deceased child. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1142.

Any provision which affords evidence that the child or the issue of any deceased child had not been forgotten is sufficient to prevent the application of this section. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1146.

The words "omits to provide" for any children or for the issue of any deceased child as used in this section mean simply an omission to make a provision in the will and have no reference to the pecuniary value of the provision. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1146.

Purpose of Section

The legislative purpose in enacting this section was not to restrict the testatrix or to dictate to her what provisions she

should make. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1146.

Will Construed to Apply to Children

Where will contained provision for "each of my heirs-at-law not elsewhere herein mentioned" to receive the sum of one dollar, such provision applied to children of a deceased child, the residuary clause naming part of the living children by name and another clause specifically disinheriting the other living children by name and there was no omission. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1143.

References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

Right of illegitimate child to take under testamentary gift to "children." 34 ALR 2d 4.

91-139. (7012) Lineal descendants take estate upon death of devisee, etc.

References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

Benefit of direction in will for payments by devisee or legatee to third person as surviving latter's death and passing as part of his estate. 6 ALR 2d 366.

Devise or bequest to designated individual "or his estate," "or his children," "or his representative," or the like (other than "or his heirs"), as subject to lapse in event of individual's death before that of testator. 11 ALR 2d 1387.

91-142. (7015) Restriction to devise for charitable purposes.

Valuation of estate for purposes of statutes limiting amount or proportion that may be devised or bequeathed for charitable purposes; problems of computation. 11 ALR 2d 1142.

CHAPTER 2—WILLS—INTERPRETATION

91-201. (7016) Testator's intention to be carried out.

Nomination of Executor

A testator, in his will, may designate a person who is to have the authority to nominate an executor. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

91-202. (7017) Intention to be ascertained from will.

Admissibility of extrinsic evidence upon issue of testamentary intent. 21 ALR 2d 319.

91-204. (7019) Several instruments are to be taken together.

Incorporation in will of extrinsic document not in existence at date of will. 3 ALR 2d 682.

91-207. (7022) When ambiguous or doubtful.

Effect of will which disposes of specific mathematical percentages or proportions of residuary estate but disposes of more or less than the whole thereof. 17 ALR 2d 653.

What passes under term "possessions" in will. 33 ALR 2d 550.

Purview of gift, charge or like, for "college education." 36 ALR 2d 1323.

91-208. (7023) Words taken in ordinary sense.

What constitutes oil or gas "royalty" within language of devise. 4 ALR 2d 492.

Word "child" or "children" in will as including grandchild or grandchildren. 14 ALR 2d 1242.

What passes under and is included, devise of "home" or "home place." 28 ALR 2d 840.

91-209. (7024) Words to receive an operative construction.

Children Not Specifically Mentioned

Where will contained provision that the residue of the estate should go to certain named children, and a provision that certain named children were intentionally omitted and another provision that "my heirs-at-law not elsewhere herein mentioned" shall receive one dollar, such latter provision will be construed to apply to children of a deceased child not named

in the other provisions of the will. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1143.

Compliance with Terms of Will

Where will provided that the court should appoint "the nominee of the Roman Catholic Bishop" as executor, the court could not disregard such provision and appoint another as administrator with the will annexed. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

91-211. (7026) Effect of technical words.

"Heirs-at-Law"

The words "heirs-at-law" applied to the children of a deceased child of the testatrix. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1144.

"Heirs," "heirs-at-law," and "legal heirs" are in a legal sense the same. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1143.

Operation and Effect

Where the deceased in a holographic will bequeathed certain personal property to a Katherine Clauson and "also the residue of my estate after all bequests are taken care of," the word "bequeath" is sufficient to include real estate located in Montana. In re Gift's Estate, 125 M 95, 232 P 2d 328, 331.

"Proceeds" in will as indicating intention as to whether assets are to constitute principal or income. 1 ALR 2d 194.

91-212. (7027) Technical words not necessary.

Operation and Effect

The word "bequeath" is sufficient to include real estate where the deceased in a holographic will bequeathed certain articles of personal property to Katherine Clauson and "also the residue of my estate after all bequests are taken care of." In re Gift's Estate, 125 M 95, 232 P 2d 328, 331.

"Proceeds" in will as indicating intention as to whether assets are to constitute principal or income. 1 ALR 2d 194.

91-218. (7033) "Heirs," "relatives," "issue," "descendants," etc.

"Heirs-at-Law"

Heirs-at-law are those determined under the Code provisions on succession in force at the time of death of the testatrix. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1144.

Time of ascertainment of membership with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

Who are within gift or grant to "offspring." 23 ALR 2d 842.

91-219. (7034) Words of donation and of limitation.

"Heirs-at-Law"

The words "my heirs-at-law" as used in a will were words of donation expressing a gift, a gratuitous transfer of property from one to another. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1144.

91-220. (7035) To what time words refer.

Words of survivorship in will disposing of estate in remainder as referable to death of testator or to termination of intervening estate. 20 ALR 2d 830.

91-221. (7036) Devise or bequest to a class.

Time of ascertainment of membership with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

Taking per stirpes or per capita under will. 13 ALR 2d 1023.

91-225. (7040) When devises and bequests vest.

References

Cited or applied in In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 658.

Provision of will for forfeiture in case of contest, as applied to contest by one not a beneficiary. 7 ALR 2d 1357.

91-226. (7041) When cannot be divested.

Antilapse statute as applicable to devise or bequest in terms of distributive share, under law, in estate of testator. 3 ALR 2d 1419.

Appointee's renunciation of appointment. 9 ALR 2d 1382.

91-227. (7042) Death of devisee or legatee.

References

Cited or applied in In re Kay's Estate, 127 M 172, 260 P 2d 391, 393.

Antilapse statute as applicable to devise or bequest in terms of distributive share, under law, in estate of testator. 3 ALR 2d 1419.

Benefit of direction in will for payments by devisee or legatee to third person as surviving latter's death and passing as part of his estate. 6 ALR 2d 366.

Devise or bequest to designated individual "or his estate," "or his children," "or his representatives," or the like (other than "or his heirs"), as subject to lapse in event of individual's death before that of testator. 11 ALR 2d 1387.

91-228. (7043) Interests in remainder are not affected.

Murder of life tenant by remainderman or reversioner as affecting latter's rights to remainder of reversion. 24 ALR 2d 1120.

91-229. (7044) Conditional devises and bequests.

Operation and Effect

A power of attorney to a physician to perform all medical services for decedent for which he was to receive $2,000, any unpaid balance thereof to be paid by her executor contained a conditional disposition. Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 596.

Substitution of beneficiaries upon devise or bequest to designated individual "or his estate," "or his children," "or his representatives," or the like, other than "or his heirs." 11 ALR 2d 1387.

91-235. (7050) Advancements—when ademptions.

Construction and effect of general legacy conditional upon ademption of specific legacy or devise to legatee. 2 ALR 2d 819.

Ademption of legacy of business or interest therein. 16 ALR 2d 1404.

CHAPTER 3—WILLS—GENERAL PROVISIONS

91-303. (7053) Order of resort to estate for debts.

Phrase in will, "subject to payment of debts," and the like, as charging particular devise or bequest with debts in exoneration of property otherwise subject thereto. 2 ALR 2d 1310.

91-304. (7054) Same—for payment of legacies.

Legacy accepted by surviving spouse in lieu of dower for other marital rights as charge upon real estate, where personalty is insufficient to pay legacy. 2 ALR 2d 607.

91-310. (7060) Bequest of interest.

"Proceeds" in will as indicating intention as to whether assets are to constitute principal or income. 1 ALR 2d 194.

91-311. (7061) Satisfaction.

Satisfaction or ademption of general legacy by inter vivos gift, transfer, or payment to the legatee or another. 26 ALR 2d 9.

91-315. (7065) Executor according to the tenor.

Delegation of Authority to Name Executor

A testatrix has the right to delegate to the person in whom she has confidence and trust the power to name the executor of her will. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

91-319. (7069) The law of what place applies.

Operation and Effect

The validity of a transfer of real property in Montana by means of a holographic will is determined by Montana law. In re Gift's Estate, 125 M 95, 232 P 2d 328, 332.

CHAPTER 4—SUCCESSION

Section 91-423. Uniform Simultaneous Death Act—disposition of property when no sufficient evidence of survivorship.
91-424. Simultaneous death of successive beneficiaries—division of property.
91-425. Simultaneous death of joint tenants or tenants by the entirety.
91-426. Insurance policies—death of insured and beneficiary.
91-427. Act not retroactive.
91-428. Act does not apply if decedent provides otherwise.
91-429. Uniformity of interpretation.
91-430. Short title.

91-402. (7072) Intestate estate—to whom passes.

Confirmation of Sale of Property—Heirs as Necessary Parties

Where sale of land was made by oral agreement with administrator without confirmation of court, and thereafter to clear title a petition for sale of land was filed and bids were received, one by the purchaser for the amount so paid and one from another party for more than twice the amount bid by the purchaser (see section 91-3016), and sale was confirmed in such purchaser, such sale and judgment of confirmation were void on objection of the heirs although no fraud was practiced, the heirs not being parties to the proceeding. Larson v. Whitmer, 124 M 399, 224 P 2d 983, 986.

Operation and Effect

Where a person dies without a will the property passes to the heirs immediately subject to administration, therefore the fact that a person claims to be the owner of all the property of the estate of his deceased mother does not affect his statutory right to administer the estate. In re Wilcox' Estate, 122 M 290, 201 P 2d 989, 991.

References

Cited in In re Van Voast's Estate, 127 M 450, 266 P 2d 377, 382 (dissenting opinion); In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 658.

91-403. (7073) Succession to and distribution of estates.

"Heirs-at-Law"

Heirs-at-law are those determined under the Code provisions on succession in force at the time of death of the testatrix. In re Benolken's Estate, 122 M 425, 205 P 2d 1141, 1144.

Right of Adopted Child to Inherit from Natural Parents

Nothing in the adoption laws of Montana nor in any other Montana laws say that upon adoption, the lawfully begotten bodily issue of a person ceases to be the heir of its natural parent. In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

The adoption of a child does not destroy his status as one of the issue of his natural ancestors nor does an adopted child lose his right to inherit from his natural parent. In re Kay's Estate, 127 M 172, 260 P 2d 391, 395.

References

Cited in Harrison v. Cannon, 122 M 318, 203 P 2d 978; In re Van Voast's Estate, 127 M 450, 266 P 2d 377, 381 (dissenting opinion); In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 659.

Time of ascertainment of membership with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

91-404. (7074) Illegitimate children to inherit in certain events.

Right of illegitimate to take under testamentary gift to "heirs." 27 ALR 2d 1232.

91-406. (7076) Degrees of kindred—how computed.

Time of ascertainment of membership with respect to devise or bequest to class which takes effect at testator's death. 6 ALR 2d 1342.

91-423. Uniform Simultaneous Death Act—disposition of property when no sufficient evidence of survivorship. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously,

the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

History: En. Sec. 1, Ch. 20, L. 1951.

Compiler's Note

The Uniform Simultaneous Death Act has been adopted by Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, Wisconsin and Wyoming.

Title of Act

An act providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously, and to make uniform the law with reference thereto, and repealing paragraph forty (40), section 93-1301-7, Revised Codes of Montana of 1947.

Death⇨5.
25 C.J.S. Death § 11.

91-424. Simultaneous death of successive beneficiaries—division of property. Where two [2] or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

History: En. Sec. 2, Ch. 20, L. 1951.

91-425. Simultaneous death of joint tenants or tenants by the entirety. Where there is no sufficient evidence that two [2] joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two [2] joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

History: En. Sec. 3, Ch. 20, L. 1951.

91-426. Insurance policies—death of insured and beneficiary. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

History: En. Sec. 4, Ch. 20, L. 1951.

91-427. Act not retroactive. This act shall not apply to the distribution of the property of a person who has died before it takes effect.

History: En. Sec. 5, Ch. 20, L. 1951.

91-428. Act does not apply if decedent provides otherwise. This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this act.

History: En. Sec. 6, Ch. 20, L. 1951.

91-429. Uniformity of interpretation. This act shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

History: En. Sec. 7, Ch. 20, L. 1951.

91-430. Short title. This act may be cited as the Uniform Simultaneous Death Act.

History: En. Sec. 8, Ch. 20, L. 1951.

Repealing Clause

Section 9 of Ch. 20, L. 1951 repealed all acts and parts of acts in conflict therewith and paragraph 40 of sec. 93-1301-7, R. C. M. 1947.

Separability Clause

Section 10 of Ch. 20, L. 1951 read "If any of the provisions of this act or the application thereof to any persons or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable."

CHAPTER 5—ESCHEATED ESTATES—INHERITANCE BY NONRESIDENT ALIENS—DISPOSAL OF UNCLAIMED PROPERTY

Section 91-502. Title to escheated property vests in state—when.
91-510. Disposition of moneys from escheated estates.
91-512. Duty of attorney general—employment of special assistant.
91-520. Conditions under which aliens in foreign country may inherit.
91-521. Duties of executors and administrators in estates involving alien heirs.

91-502. Title to escheated property vests in state—when. Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be deposited by the treasurer in the escheated estates fund; in connection with the recovery of money or property from escheats other than those from estates, the state treasurer is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the escheated estates fund shall be held in trust for a period of ten (10) years prior to deposit in the public school fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title, or interest in the property or money escheated may make claim upon the escheated estates fund by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953.

Amendment

The 1953 amendment substituted the word "or" for a comma which appeared after the word "real" and added the words "any reason including" in the first sentence; added the proviso to the first paragraph and added the second, third and fourth paragraphs to this section.

Repealing Clause

Section 2 of Ch. 170, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 170, Laws 1953 provided the act should be in effect immediately upon its passage and approval. Approved March 3, 1953.

91-509. Court action by claimant of property, etc.

References

Cited or applied in the dissenting opinion in In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1089.

91-510. Disposition of moneys from escheated estates. All money or property which is at the time of the passage and approval of this act in the hands of the state treasurer, from escheated estates, shall be placed by him in a fund to be known as the escheated estates fund of the State of Montana: Out of said fund the state treasurer shall pay all claims regularly presented against the state and approved by the state board of examiners in order to defray the costs of enforcing this act and all other acts relating to escheated estates in an amount to be designated and appropriated by the legislative assembly of the state of Montana each biennium. "Costs" shall be construed to mean such expenses as are necessarily employed in the enforcement and administration of the escheated estate laws and all other expenses of enforcing the provisions of the laws relative to escheated estates.

All other sums remaining in the escheated estates fund and not otherwise herein provided for administrative purposes and expenses shall be deposited by the state treasurer in the public school fund on the first day of July, 1953, and on the first day of July of each year thereafter.

Provided further, however, that trust estates created under the provisions of section 91-520, Revised Codes of Montana, 1947, as amended, shall not become a part of the escheated estates fund until finally escheated as provided by law.

History: En. Sec. 10, Ch. 184, L. 1943; amd. Sec. 1, Ch. 165, L. 1953.

Amendment

The 1953 amendment completely rewrote this section. Prior to amendment it read: "All money or property, which is at the time of the passage and approval of this act, in the hands of the state treasurer, from escheated estates, shall be placed by him in the public school fund of the state of Montana and any person claiming such money or property at any time thereafter shall have two (2) years after the passage and approval of this act in which to file and bring an action for the recovery of the same as hereinabove provided."

Repealing Clause

Section 3 of Ch. 165, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 165, Laws 1953 provided the act should be in effect immediately after its passage and approval. Approved March 3, 1953.

91-512. Duty of attorney general—employment of special assistant. The attorney general of the state of Montana shall be the legal advisor to the state treasurer in connection with all escheated property matters and it shall be the duty of the attorney general to make investigations and conduct inquiries to determine whether there is property in the state of Montana which should escheat to the state of Montana, and to take all steps necessary to secure such escheat, and for this purpose the attorney general is authorized and empowered to employ a special assistant at a salary not to exceed six thousand dollars ($6,000.00) per annum together with actual, necessary expenses while engaged in outside work in connection with the duties of his office as defined by law. Such salary and expenses shall be payable monthly from the escheated estates fund.

History: En. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953.

Amendment

The 1953 amendment raised the salary of the special assistant from $3,000 to $6,000; added expense provisions and added the last sentence.

Repealing Clause

Section 3 of Ch. 193, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 193, Laws 1953 provided the act should be in effect immediately after its passage and approval. Approved March 4, 1953.

91-520. Conditions under which aliens in foreign country may inherit. 1. No person shall receive money or property, save and except mining property, as provided in section 25, Article III, of the Constitution of the state of Montana, as an heir, devisee and/or legatee of a deceased person leaving an estate or portion thereof in the state of Montana, if such heir, devisee and/or legatee, at the time of the death of said deceased person, is not a citizen of the United States and is a resident of a foreign country at the time of the death of said intestate or testator, unless, reciprocally, the foreign country in question would permit the transfer to an heir, devisee and/or legatee residing in the United States, of property left by a deceased person in said foreign country.

2. In order to prove reciprocity the alien heir, devisee and/or legatee must establish by competent evidence produced at a hearing to determine heirship; (a) that such foreign country recognizes the right of United States citizens to inherit property left by a deceased person in such foreign country; (b) that such foreign country places no restrictions upon the movement of money or property out of such foreign country to an heir, devisee and/or legatee residing in the United States.

3. If such proof as required by subsection 2 establishes the fact that such foreign country recognizes the right of inheritance, but restricts the movement of money or property out of such foreign country to an heir, devisee and/or legatee residing in, and a citizen of the United States, then and in that event, the court upon such a determination, shall at the time of final distribution, order the inheritance of such alien heir, devisee

and/or legatee distributed to the state treasurer of the state of Montana, in trust for such named heir, devisee and/or legatee, under such conditions and restrictions as are imposed on the movement of money or property by such foreign country in question to an heir, devisee and/or legatee residing in, and a citizen of the United States.

4. In an action for dissolution of the trust so created, the following jurisdictional facts must be set forth in the complaint: (a) the name of the beneficiary of the trust; (b) the foreign country in which the beneficiary has his permanent residence; (c) the conditions and restrictions imposed upon the trust funds by the court in its decree of final distribution; (d) the fact that the beneficiary is in the state of Montana; (e) the verification of the complaint by the beneficiary before an official of the state of Montana authorized by law to administer oaths; (f) that the action has been commenced within the period of three (3) years of the date the trust was created, unless the conditions of the trust declare a shorter or longer period to exist in the country of the foreign heir's residence and that reciprocally such period has been imposed to satisfy the requirements of reciprocity, hereinabove set forth; (g) in the event that the beneficiary is a minor or insane person, his action must be instituted within the period of limitation herein provided for the commencement of the action, by his guardian, duly appointed under the laws of the country of residence of said minor or insane person and the record of such appointment shall be fully exemplified and attested by a duly accredited representative of the state department of the government of the United States of America in such foreign country; (h) unless the action herein provided shall have been commenced within three (3) years, or such shorter or longer period as is specifically declared as a condition of the trust, as hereinabove required, then such trust funds shall forthwith escheat to the state of Montana, and no action can thereafter be instituted in the courts of this state for the recovery of such escheated trust funds.

5. The action provided for under the provision of subsection 4 hereof shall in all other respects comply with the requisites of section 91-518.

6. No estate in which alien heirs, devisees and/or legatees have a distributive share shall be considered to be in a condition to petition for final distribution, unless, the court enters a written order in such estate decreeing that an action for determination of heirship has been instituted in which the state of Montana was made a party-defendant and that a decree determining heirship has been entered and filed in said action.

History: En. Sec. 2, Ch. 104, L. 1939; amd. Sec. 1, Ch. 31, L. 1951; amd. Sec. 1, Ch. 144, L. 1953.

Amendments

The 1951 amendment added all that part of this section following the first paragraph.

The 1953 amendment in subsection 4 (f) added the number "(3)" and the part beginning with the words "unless the conditions"; in subsection 4 (h) inserted "(3)", the words "or such shorter or longer period as is specifically declared as a condition of the trust" and the word "hereinabove" between the words "as" and "required."

Repealing Clauses

Section 2 of Ch. 31, Laws 1951 and Sec. 2 of Ch. 144 Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 144, Laws 1953 provided this act should be in effect immediately after its passage and approval. Approved March 2, 1953.

Determination of Heirship by Court

Rather than relying on the opinion of a California court that heirs in Rumania may inherit from persons dying in this country since there is reciprocity between the United States and Rumania, a trial court should make its own determination of whether or not the country of Rumania has reciprocity with the United States in connection with inheritance after due notice is given to the interested litigants that a case decided in a sister state is to be used in connection with its findings and an opportunity afforded all litigants interested to be heard upon the question. Such trial court should also make a determination as to whether or not such foreign country places restrictions upon the movement of money or property out of such foreign country, and if so make its order accordingly. In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1088. (Dissenting opinions, 128 M 52, 269 P 2d 1085, 1088, 1089.)

Foreign Law—Notice

Before one can rely on a foreign country's law that persons in this country may inherit property located in the foreign country there must be notice given of the intent to rely on the foreign law. In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1088. (Dissenting opinions, 128 M 52, 269 P 2d 1085, 1088, 1089.)

Operation and Effect

Where reciprocity was shown and such foreign heirs were residents of Rumania, their shares in the estate of the deceased, by operation of law, passed to the attorney general of the United States, successor to the rights of the alien property custodian, because Rumania was a "designated enemy country." In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 659.

Where the decedent died in 1940, his estate vested immediately in his heirs and the 1951 amendment to this section which requires in proving reciprocity that the alien heir established that such foreign country places no restrictions upon the movement of money or property out of such foreign country, the amendment would not apply to the instant proceeding since it would take away or impair vested rights. In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 662.

Operation of Amendment

Where death occurred in 1949, the estate passed at that time and the amendment made in 1951 can have no application to this estate. In re Spoya's Estate, — M —, 282 P 2d 452, 454.

Reciprocity—Burden of Proof

The burden of proving reciprocity falls upon the foreign heirs, because they, being in the foreign country, are in a better position to prove the laws thereof than any other party to the heirship proceedings. The fact that such burden rests upon the foreign heirs does not mean, however, that no other party to the heirship proceedings may make such proof, where it is to their interests to do so. In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 659.

Reciprocity—Proving

Certified copies of decisions of district courts, containing the seal of the court properly authenticated and in substantial compliance with 93-1001-19, showing in substance that in the cases under consideration American citizens either inherited property from the estate of one dying in Yugoslavia or the decision otherwise respected property rights of American citizens in property in Yugoslavia were properly received in evidence. In re Spoya's Estate, — M —, 282 P 2d 452, 456.

Certificates made by the ambassador extraordinary and plenipotentiary of Yugoslavia to the United States to the effect that the Constitution and laws of Yugoslavia and treaties between Yugoslavia and the United States accord to citizens of the United States the reciprocal right of inheritance equal to those accorded to citizens of Yugoslavia were properly received in evidence to prove reciprocity. In re Spoya's Estate, — M —, 282 P 2d 452, 456.

The qualification of a witness to testify as an expert is a matter within the sound discretion of the trial court, and where there is no showing of a clear abuse of that discretion the ruling of that court will not be disturbed on appeal. In re Spoya's Estate, — M —, 282 P 2d 452, 455.

It is not a requirement that before a person can be an expert in the field of foreign law that he must have been admitted to practice law in some jurisdiction. In re Spoya's Estate, — M —, 282 P 2d 452, 455.

Portions of the Constitution of Yugoslavia, certified to by the Minister of Justice of Yugoslavia, and relating to the inheritance of private property were properly received in evidence. In re Spoya's Estate, — M —, 282 P 2d 452, 456.

91-521. Duties of executors and administrators in estates involving alien heirs. In any estate where money or property would have vested in any alien person but for the provisions of section 91-520, it shall be the

duty of the executor or the administrator thereof, as soon as he shall have completed and filed the inventory and appraisement in said estate to furnish the attorney general with the following written information and file a copy thereof, in the probate proceedings in said estate:

1. The names and addresses of the alien heirs, devisees and/or legatees in said estate;

2. The share, or proportionate share thereof of each of said alien heirs;

3. The appraised value of the entire estate.

History: En. Sec. 3, Ch. 104, L. 1939; amd. Sec. 1, Ch. 30, L. 1951.

Amendment

The 1951 amendment provided for the filing of names of alien heirs with the attorney general after inventory and appraisement instead of listing such heirs in the petition for letters and also in the petition for distribution. The amendment also omitted those provisions of the section providing for the disposition of property which would have gone to such heirs. Present provisions for the disposition of such property are found in sec. 91-520.

Repealing Clause

Section 2 of Ch. 30, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—PROBATE PROCEEDINGS—PUBLIC ADMINISTRATOR

91-601. (9990) Duties of public administrator.

References

Cited or applied in the dissenting opinion in State ex rel. Hill v. District Court, 126 M 1, 242 P 2d 850, 854, 31 ALR 2d 749.

CHAPTER 7—PROBATE PROCEEDINGS—GENERAL JURISDICTION OF DISTRICT COURT

91-701. (10018) Jurisdiction of the court over the estate, etc.

"Domiciliary" and "Ancillary" Administration

Administration in the state where the person was domiciled at the time of his death is deemed the principal or primary administration and is ordinarily termed "domiciliary administration," while administration in a state other than where the decedent was domiciled at the time of his death but wherein the decedent left property is termed "ancillary" or "auxiliary" administration. In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

Operation and Effect

Where, at the time of decedent's death his alleged will, wherever executed was a domestic document in Montana wherein decedent was domiciled and left estate and not a foreign writing of some person residing and domiciled in some other state or foreign country, the filing, offering for probate and proving of such domestic will is governed by the provisions of this section, sections 91-801 to 91-812, 91-901 to 91-907 and not by the provisions of sections 91-1001, 91-1002 and 91-1003. In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

Original Probate

Under the provisions of subdivision 1 of this section it is the declared public policy of this jurisdiction that the first, the primary or the original probate of a will should be made in the county in which the decedent was a resident and domiciled at the time of his death. In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

Residence

In the enactment of subdivision 1 of this section the legislature has treated "residence" as synonymous with "domicile." In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

Residence of Decedent

Where decedent was a life long resident of one county but went to another county to a rest home since no similar care could be obtained in his home county and other evidence disclosed that he did not intend to change his residence, he retained his legal residence in his home county. In re Ingersol's Estate, 128 M 230, 272 P 2d 1003.

References

Cited or applied in In re Bargler's Estate, — M —, 289 P 2d 680, 681.

CHAPTER 8—PROBATE PROCEEDINGS—PROBATE OF WILLS

Section 91-811. Proof required when no contest.

91-801. (10020) Custodian of will to deliver same, to whom—penalty.

References

Cited or applied in In re Smith's Estate, 126 M 558, 255 P 2d 687, 691; State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 551 (dissenting opinion).

91-802. (10021) Who may petition for probate of will.

References

Cited or applied in the dissenting opinion in State ex rel. Hill v. District Court, 126 M 1, 242 P 2d 850, 852, 31 ALR 2d 749; In re Minder's Estate, 128 M 1, 270 P 2d 404, 410.

91-803. (10022) Contents of petition.

References

Cited in In re Minder's Estate, 128 M 1, 270 P 2d 404, 412.

91-804. (10023) When executor forfeits right to letters.

Construction

This section is neither mandatory nor jurisdictional. It does not compel action. It merely permits action and then only in a case coming squarely within its provisions. In re Minder's Estate, 128 M 1, 270 P 2d 404, 408.

Mere failure of the executor to file his petition for probate and for letters for 30 days or more after learning of testator's death will not of and in itself effect a forfeiture of the named executor's right to letters testamentary, for, if and when good cause be shown for the delay, then and thereupon, the trial judge is divested of his authority to adjudge an involuntary or implied renunciation of the named executor's right to letters testamentary. In re Minder's Estate, 128 M 1, 270 P 2d 404, 408.

Operation and Effect

Good cause was shown for the delay of the named executor in filing the petition for probate when it was shown that he delayed the filing at the request of the heirs and legatees in order for them to give him an inventory of the estate but that they evaded doing so. In re Minder's Estate, 128 M 1, 270 P 2d 404.

References

Cited or applied in In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

91-806. (10025) Notice of petition for probate—how given.

Operation and Effect

Where the decedent was domiciled in Montana and left an estate, the statutory requirements for offering the will to probate, notice, and the opportunity to contest the purported will may not be circumvented and evaded by the simple device of first offering decedent's alleged will for probate in California, where decedent also left some property, and then returning to Montana, the state of decedent's residence and domicile, with an authenticated copy of the probate proceedings had in California and thereupon, without any notice whatever to the heirs, legatees, and devisees resident in Montana, obtaining an order admitting the alleged will to probate and granting letters of administration, merely upon the presentation of a petition therefor and the submission of the authenticated copy of the California proceedings. In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

91-807. (10026) Heirs and named executors to be notified, how.

Operation and Effect

Where the decedent was domiciled in Montana and left an estate, the statutory requirements for offering the will to probate, notice, and the opportunity to contest the purported will may not be circumvented and evaded by the simple device of first offering decedent's alleged will for probate in California, where decedent also left some property, and then returning to Montana, the state of decedent's residence and domicile, with an authenticated copy of the probate proceedings had in California and thereupon, without any notice whatever to the heirs, legatees, and devisees resident in Montana, obtaining an order admitting the alleged will to probate and granting letters of administra-

tion, merely upon the presentation of a petition therefor and the submission of the authenticated copy of the California proceedings. In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

91-810. (10029) **Who may appear and contest the will.**

Executor of Prior Will Cannot Contest a Will

The only persons authorized to contest a will are those who, but for the will, would succeed in some degree to the decedent's estate; therefore, an executor named in a prior will cannot contest a codicil naming a new person executor. State ex rel. Hill v. District Court, 126 M 1, 242 P 2d 850, 31 ALR 2d 749 (the court was closely divided on this, however, see the dissenting opinion of two judges, 126 M 1, 242 P 2d 850, 852.)

References

Cited or applied in In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

Right to contest will or attack its validity. 28 ALR 2d 116.

Right of executor or administrator to contest will or codicil of his decedent. 31 ALR 2d 756.

91-811. (10030) **Proof required when no contest.** If no person appears to contest the probate of a will, the court or judge may admit the same to probate:

(a) On the testimony of one of the subscribing witnesses only if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

(b) If it appears at the time of the filing of the petition to have the will proved that none of the subscribing witnesses reside in the county, and that the deposition of one of the witnesses to the will can be taken elsewhere, the court may direct it to be taken and may authorize a photographic copy of the will to be made and presented to such witness on his examination, who may be asked the same questions with respect to it and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

(c) If none of the subscribing witnesses reside in the county at the time appointed for proving the will, and it is made to appear to the court that the execution of the will cannot be proven under either of the foregoing subdivisions of this section, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of such execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

History: En. Sec. 18, p. 244, L. 1877; re-en. Sec. 18, 2nd Div. Rev. Stat. 1879; re-en. Sec. 18, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2330, C. Civ. Proc. 1895; re-en. Sec. 7395, Rev. C. 1907; re-en. Sec. 10030, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1925; amd. Sec. 1, Ch. 71, L. 1949. Cal. C. Civ. Proc. Sec. 1308.

Amendment

The 1949 amendment substituted "of the filing of the petition to have the will proved" in subdivision (b) for "fixed for the hearing."

Repealing Clause

Section 2 of Ch. 71, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 71, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

References

Cited or applied in In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

CHAPTER 9—PROBATE PROCEEDINGS—CONTESTING PROBATE OF WILLS

91-901. (10032) Contestant to file grounds of contest, etc.

Estoppel

Although estoppel usually must be specially pleaded, in a will contest where grounds for objection to probate of will were that deceased had married after the execution of the will, and petitioner answered alleging the last marriage was void by reason of a previous marriage which had not been dissolved, no further pleading would be permissible under this section and therefore evidence of estoppel to question the validity of the divorce and second marriage was properly admissible. In re Anderson's Estate, 121 M 515, 194 P 2d 621, 626.

Operation and Effect

In a will contest the contestant has the burden of proof and ordinarily should be the one to first submit proof. But where the proponent submitted his proof first and covered the entire field there would be no purpose in going over the same ground a second time. In re Swords' Estate, — M —, 284 P 2d 674, 679.

References

Cited or applied in In re Smith's Estate, 126 M 558, 255 P 2d 687, 692; State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 550.

CHAPTER 10—PROBATE OF FOREIGN WILLS

Section 91-1001. Wills proved in other states to be recorded, when and where.

91-1001. (10039) Wills proved in other states to be recorded, when and where.

All wills duly proved and allowed in any other of the United States, or in any foreign country or state, may be allowed and recorded in the district court of any county in which the testator shall have left any estate, provided however, that the primary probate of any will of any testator who, at the time of his death, was a resident of Montana and left estate therein, must be had in the county of his residence in this state, and may not be proved and admitted as a foreign will.

History: En. Sec. 27, p. 246, L. 1877; re-en. Sec. 27, 2nd Div. Rev. Stat. 1879; re-en. Sec. 27, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2350, C. Civ. Proc. 1895; re-en. Sec. 7404, Rev. C. 1907; re-en. Sec. 10039, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1939; amd. Sec. 1, Ch. 56, L. 1953. Cal. C. Civ. Proc. Sec. 1322.

Amendment

The 1953 amendment deleted the words "or shall have been a resident at the time of his death" which appeared after the words "testator shall have left any estate" and added the proviso.

Repealing Clause

Section 2 of Ch. 56, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 56, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

Operation and Effect

Where at the time of decedent's death his alleged will was a domestic document in Montana wherein decedent was domiciled and left estate and not a foreign writing of some person residing and domiciled in some other state or foreign country, the filing, offering for probate and proving of such domestic will is governed by the provisions of sections 91-701, 91-801 to 91-812, 91-901 to 91-907 and not by the provisions of sections 91-1001, 91-1002 and 91-1003. In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

91-1002. (10040) Proceedings on production of foreign will.

Operation and Effect

Where the decedent was domiciled in Montana and left an estate, the statutory requirements prescribed in Chapter 8 of Title 91, relating to the offering of the will to probate, notice, and the opportunity to contest, may not be circumvented and evaded by the simple device of first offering decedent's alleged will for probate in California, where decedent also left some property, and then returning to Montana, the state of decedent's residence and domicile, with an authenticated copy of the probate proceedings had in California and thereupon, without any notice whatever to the heirs, legatees, and devisees resident in Montana, obtaining an order admitting the alleged will to pro-

bate and granting letters of administration, merely upon the presentation of a petition therefor and the submission of the authenticated copy of the California proceedings. In re Smith's Estate, 126 M 558, 255 P 2d 687, 692.

91-1003. (10041) Hearing proofs of probate for foreign will.

References

Cited or applied in In re Gift's Estate, 125 M 95, 232 P 2d 328, 332; In re Smith's Estate, 126 M 558, 255 P 2d 687, 691.

CHAPTER 11—PROBATE PROCEEDINGS—CONTESTING WILLS AFTER PROBATE

91-1101. (10042) The probate may be contested within one year.

References

Cited or applied in State ex rel. Hill v. District Court, 126 M 1, 242 P 2d 850, 851, 31 ALR 2d 749.

CHAPTER 13—PROBATE PROCEEDINGS—EXECUTORS AND ADMINISTRATORS —ISSUANCE OF LETTERS TESTAMENTARY AND OF ADMINISTRATION

91-1301. (10056) To whom letters on proved will to issue.

Designation of Person to Name Executor

Where testatrix provided that "the nominee of the Roman Catholic Bishop" act as executor the court was required to appoint the person nominated by such bishop as executor and could not appoint another as administrator with the will annexed. In re Effertz' Estate, 123 M 45, 207 P 2d 1151, 1154, 11 ALR 2d 1278.

References

Cited or applied in In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

CHAPTER 14—PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED

91-1401. (10068) Order of persons entitled to administer, etc.

Failure to Apply—Effect

The fact that son made no application for letters of administration of estate of deceased mother until after application of public administrator, did not work a forfeiture of his right to be appointed where he was laboring under the impression there was no estate to administer. In re Wilcox' Estate, 122 M 290, 201 P 2d 989, 991.

Where persons entitled to preference in appointment as administrator fail to file a petition until letters have been issued to another and have not availed themselves of the provisions of section 91-1504, they cannot have the letters revoked except under the provisions of section 91-1601 or sections 91-2101 to 91-2105. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

Operation and Effect

This section is exclusive and mandatory and if person is properly qualified to administer estate the order of priority cannot be deviated from by the court. In re Wilcox' Estate, 122 M 290, 201 P 2d 989, 990.

References

Cited or applied in the dissenting opinion in State ex rel. Hill v. District Court, 126 M 1, 242 P 2d 850, 854, 31 ALR 2d 749. In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1074.

91-1402. (10069) Preference of persons equally entitled.

References

Cited or applied in In re Hanson's Estate, 128 M 270, 273 P 2d 103, 104.

91-1405. (10072) Who are incompetent to act as administrators.

Cross-Reference

See note to sec. 91-1509. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

Assertion of Claim to Property

Where a person dies without a will the property passes to the heirs immediately

subject to administration, therefore the fact that a person claims to be the owner of all the property of the estate of his deceased mother does not affect his statutory right to administer the estate. In re Wilcox' Estate, 122 M 290, 201 P 2d 989, 991.

References

Cited or applied in In re Hansen's Estate, 126 M 522, 254 P 2d 1073, 1075.

CHAPTER 15—PETITION FOR LETTERS OF ADMINISTRATION AND ACTION THEREON

91-1504. (10077) Contesting application.

References

Cited or applied in In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

Adverse interest or position as disqualification for appointment as personal representative. 18 ALR 2d 633.

91-1509. (10082) Letters may be granted to others than those entitled.

Revocation of Letters

Where creditor of decedent had been appointed as administratrix, the nephews and nieces could not apply for the revocation of the letters. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

CHAPTER 16—PROCEEDINGS FOR REVOCATION OF LETTERS OF ADMINISTRATION

91-1601. (10083) Revocation of letters of administration.

Cross-Reference

See note to sec. 91-1509. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

CHAPTER 17—OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS

Section 91-1723. Cost of procuring bonds.

91-1723. (10106) Cost of procuring bonds.

Any receiver, assignee, guardian, trustee, committee, executor, administrator, curator, or other fiduciary required by law, or the order of any court or the judge thereof, to give a bond or other obligation as such, may include, as a part of the lawful expense of executing his trust, such reasonable sum paid a company authorized under the laws of this state to be or become surety on any such bond, for becoming his surety on such bond or obligation, as may be allowed by the court in which, or a judge before whom, he is required to account, not exceeding the sum determined by the rate established for the same or comparable bonds or obligations by a nationally recognized rating bureau licensed in this state; and in all actions and proceedings the party entitled to recover costs therein shall be allowed and may tax and recover such sum paid such company for executing any bond, recognizance, undertaking, stipulation, or other obligation, not exceeding, however, the sum determined by the rate established therefor by a nationally recognized rating bureau licensed in this state.

History: En. Sec. 1, Ch. 78, L. 1903; re-en. Sec. 7723, Rev. C. 1907; re-en, Sec. 10106, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1955.

Amendment

The 1955 amendment substituted the words "the sum determined by the rate established for the same or comparable bonds or obligations by a nationally

recognized rating bureau licensed in this state" for the words "one-half of one per cent per annum on the amount of such bond"; deleted the word "therein" which appeared between the words "obligation" and "not" and substituted the words "the sum determined by the rate established therefor by a nationally recognized rating bureau licensed in this state" for the words "one-half of one per cent on the amount of such bond, recognizance, undertaking, stipulation, or other obligation, during each year same has been in force."

Repealing Clause

Section 2 of Ch. 184, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 184, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 4, 1955.

CHAPTER 20—DISQUALIFICATION OF JUDGE AND TRANSFER OF ADMINISTRATION

91-2001. (10120) Disqualification of judges.

Operation and Effect

There is no case brought to our attention that holds that when a judge is disqualified for imputed bias and prejudice in a probate matter, he must act under section 91-2001 in calling the nearest district judge to preside in the matter. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1078.

This section in substance and effect disqualifies a judge when he is interested in the estate or has served as attorney for an interested party. It has nothing to do with disqualification for imputed bias or prejudice. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1078.

References

Cited or applied in McLeod v. McLeod, 126 M 32, 243 P 2d 321, 323; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 694; State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 548.

91-2002. (10121) Transfer of proceedings.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 694; State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 548.

CHAPTER 21—REMOVAL AND SUSPENSION OF EXECUTORS AND ADMINISTRATORS

91-2101. (10124) Suspension of powers of executor.

Grounds for Revocation

In petition to remove administratrix appointed as creditor of decedent, allegations that such administratrix was not a creditor of the estate, that the heirs did not wish to have her appointed and that she was hostile to them and incompetent did not aver facts bringing it within the provisions of this section. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

91-2103. (10126) Any party interested may appear on hearing.

Public Administrator

The public administrator is not a person interested in the estate within the meaning of this section. In re Ruane's Estate, 122 M 387, 204 P 2d 1037, 1039.

CHAPTER 24—PROVISION FOR SUPPORT OF FAMILY

Section 91-2406. Estates not exceeding fifteen hundred dollars to go to widow or minor child or minor children—those not exceeding three thousand dollars to be summarily administered.

91-2401. (10144) Widow and minor children may remain, etc.

Construction

Widow's claim to family allowance is strongly favored in the law and statutes relating thereto will be liberally construed. In re Hall's Estate, 124 M 355, 224 P 2d 138, 140.

Daughter—Loss of Right to Allowance

Daughter's right to family allowance became lost when she attained the age of eighteen years and upon her remarriage. In re Hall's Estate, 124 M 355, 224 P 2d 138, 140.

Disposition of Allowance as Between Widow and Daughter

Where district court made order for family allowance to both widow and daughter by previous marriage but such payments were discontinued because of insufficient funds in estate, it was proper, where funds thereafter came into estate, to permit payment to widow on amount owing on family allowance so ordered where she was in need and still unmarried, but to deny any share to daughter where she was then over the age of eighteen and married. In re Hall's Estate, 124 M 355, 224 P 2d 138, 140.

References

Cited or applied in Shook v. Woodard, — M —, 290 P 2d 750, 754.

91-2404. (10147) **Payment of allowance.**

References

Cited in In re Hall's Estate, 124 M 355, 224 P 2d 138, 139.

91-2406. (10149) **Estates not exceeding fifteen hundred dollars to go to widow or minor child or minor children—those not exceeding three thousand dollars to be summarily administered.** (1) If, on the return of the inventory of the estate of an intestate, it appears that the value of the whole estate does not exceed the sum of fifteen hundred dollars ($1,500.00), the court or judge, by an order of distribution for that purpose, must distribute to the widow, if there be a widow, and if no widow, then to the minor child or minor children, if there is or are any, the whole of the estate, including the fee simple title to the real estate, if any, after the payment of the expenses of his last illness, funeral charges, and expenses of the administration, subject to whatever mortgages, liens or encumbrances there may be upon said estate at the time of the death of the deceased, and there must be no further proceedings in the administration, unless further estate be discovered.

(2) When it so appears that the value of the whole estate does not exceed the sum of three thousand dollars ($3,000.00), and the expenses of his last illness, funeral charges, and expenses of administration, as well as all other debts of the estate have been paid, it is in the discretion of the court or judge, by an order for that purpose after notice to all persons interested to appear on a day fixed to show cause why such order should not be made, to distribute the whole of the estate to the widow, if there be a widow, and if no widow then to the minor child or minor children, in the same manner as above provided in the case where the value of the whole estate does not exceed the sum of fifteen hundred dollars ($1,500.00), subject to whatever mortgages, liens or encumbrances there may be upon said estate at the time of the death of deceased. The notice to creditors must be given to present their claims within the time set by law for estates in excess of three thousand dollars ($3,000.00), and those not so presented are barred as in other cases.

History: En. Sec. 138, p. 274, L. 1877; re-en. Sec. 138, 2nd Div. Rev. Stat. 1879; re-en. Sec. 138, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2585, C. Civ. Proc. 1895; re-en. Sec. 7513, Rev. C. 1907; re-en. Sec. 10149, R. C. M. 1921; amd. Sec. 1, Ch. 57, L. 1941; amd. Sec. 1, Ch. 14, L. 1951. Cal. C. Civ. Proc. Sec. 1469.

Amendment

The 1951 amendment changed the method of distribution. Prior to amendment the first paragraph provided that the judge "must assign, set over and distribute to the widow for the use and support of herself and minor child or minor children, if there be a widow and minor child or minor

children, and if there be no minor children, then for the use and support of the widow, and if no widow, then to the minor child or minor children, if there is or are any, for his or their use and support, the whole of the estate, including the fee simple title to the real estate" and the second paragraph contained similar provisions with regard to distribution except that the estate was required to be assigned in the discretion of the judge. The amendment also substituted the words "the time set by law for estates in excess of three thousand dollars ($3,000.00)," for "four (4) months after the first publication of such notice," in the last sentence.

Effective Date

Section 2 of Ch. 14, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

Cross-Reference

Time for presenting claims against estate, sec. 91-2704.

References

Cited or applied in Shook v. Woodard, — M —, 290 P 2d 750, 754.

CHAPTER 26—DOWER—PROCEDURE TO ASSIGN

91-2607. (10164) Appointment of commissioners, and oath.

References

Cited or applied in Clark v. Clark, 126 M 9, 242 P 2d 992, 995.

91-2608. (10165) Duties of commissioners, and reports.

References

Cited or applied in Clark v. Clark, 126 M 9, 242 P 2d 992, 995.

91-2610. (10167) Judgment for yearly value or gross sum.

References

Cited or applied in Clark v. Clark, 126 M 9, 242 P 2d 992, 995.

CHAPTER 27—CLAIMS AGAINST ESTATE

Section 91-2702. Time expressed in the notice.

91-2702. (10171) Time expressed in the notice.

The time expressed in the notice must be four months after its first publication.

History: En. Sec. 148, p. 276, L. 1877; re-en. Sec. 148, 2nd Div. Rev. Stat. 1879; re-en. Sec. 148, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2601, C. Civ. Proc. 1895; re-en. Sec. 7523, Rev. C. 1907; re-en. Sec. 10171, R. C. M. 1921; amd. Sec. 1, Ch. 40, L. 1953. Cal. C. Civ. Proc. Sec. 1491.

Amendment

This section before the 1953 amendment read: "The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not."

References

Cited in In re Minder's Estate, 128 M 1, 270 P 2d 404, 412.

CHAPTER 28—SALES OF PROPERTY OF ESTATE IN GENERAL—BORROWING MONEY—SALES OF CERTAIN PERSONAL PROPERTY

91-2803. (10197) No sales valid except by order of district court.

Confirmation of Sale—Necessity

An order of sale standing alone is not sufficient to pass title from the heirs to a purchaser, but there must also be a confirmation of the sale as a condition precedent to the passing of title. Larson v. Whitmer, 124 M 399, 224 P 2d 983, 986.

Operation and Effect

The statute provides the only method by which the heirs may be divested of title to their property in the process of administering the estate and purchasers from an administrator are bound to take notice of these statutory requirements. Larson v. Whitmer, 124 M 399, 224 P 2d 983, 986.

CHAPTER 30—SALES OF REAL ESTATE AND CONTRACTS FOR PURCHASE OF LAND

Section 91-3001. Executor or administrator may sell property, when.
91-3002. Verified petition for sale—what it may contain and to what it may refer.
91-3003. Order directing interested persons to appear.
91-3013. Private sale of real estate, how made and notice—bids, when and how received.

91-3001. (10210) **Executor or administrator may sell property, when.** When a sale of the property is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies; or when it appears to the satisfaction of the court that is for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, that the real estate, or some part thereof, be sold, or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all heirs petition for such sale, the executor or administrator may sell any real as well as personal property of the estate, upon the order of the court or judge; and an application for the sale of real property may also embrace the sale of personal property.

History: En. Sec. 186, p. 288, L. 1877; re-en. Sec. 186, 2nd Div. Rev. Stat. 1879; re-en. Sec. 186, 2nd Div. Comp. Stat. 1887; amd. Sec. 2670, C. Civ. Proc. 1895; re-en. Sec. 7561, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1915; re-en. Sec. 10210, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1949. Cal. C. Civ. Proc. Sec. 1536.

Amendment

The 1949 amendment inserted the words "or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all heirs petition for such sale."

Implied power of executor or testamentary trustee to sell real estate. 23 ALR 2d 1000.

91-3002. (10211) **Verified petition for sale—what it may contain and to what it may refer.** To obtain such order for the sale of real property, he must present a verified petition to the court or judge, setting forth the amount of personal property that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner; and if said order for sale of real estate is petitioned for on the ground that it is for the advantage, benefit, and best interests of

the estate, and those interested therein, including the minor heirs, if any, or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale, that a sale be made, the petition, in addition to the foregoing facts, must set forth in what way an advantage or benefit would accrue to the estate, and those interested therein, by such sale. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the order.

History: En. Sec. 187, p. 289, L. 1877; re-en. Sec. 187, 2nd Div. Rev. Stat. 1879; re-en. Sec. 187, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2671, C. Civ. Proc. 1895; re-en. Sec. 7562, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1915; re-en. Sec. 10211, R. C. M. 1921; amd. Sec. 2, Ch. 112, L. 1949. Cal. C. Civ. Proc. Sec. 1537.

Amendment

The 1949 amendment inserted the words "or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale."

91-3003. (10212) **Order directing interested persons to appear.** If it appears to the court or judge, from such petition, that it is necessary, or that it would be for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale, to sell the whole or some portion of the real estate, for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed, and an order thereupon made, directing all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than fifteen [15], nor more than thirty [30] days from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

History: En. Sec. 188, p. 289, L. 1877; re-en. Sec. 188, 2nd Div. Rev. Stat. 1879; re-en. Sec. 188, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2672, C. Civ. Proc. 1895; re-en. Sec. 7563, Rev. C. 1907; amd. Sec. 3, Ch. 3, L. 1915; re-en. Sec. 10212, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1927; amd. Sec. 3, Ch. 112, L. 1949. Cal. C. Civ. Proc. Sec. 1538.

Amendment

The 1949 amendment inserted the words "or that said sale would alleviate expense or hardship to, or be to the best financial interest of, the estate or those interested in the estate, including the minor heirs, if any, or if all the heirs petition for such sale."

Repealing Clause

Section 4 of Ch. 112, L. 1949 repealed all acts and parts of acts in conflict therewith.

91-3004. (10213) **Service and publication of order.**

Irregularity Not Attacked in Collateral Proceeding

Although publication of notice of sale of real estate did not comply with the provisions of the statute, where jurisdiction had attached, the irregularity could not be attacked in a collateral proceeding. Haugan v. Yale Oil Corp., 124 M 1, 217 P 2d 1084, 1086.

91-3013. (10222) **Private sale of real estate, how made and notice—bids, when and how received.** When sale of real estate is ordered to be made at private sale, notice of the same must be posted in three (3) of the most public places in the county in which the land is situated, such notice to be posted at least ten (10) days before the date of sale. Such notice shall be published in a newspaper if there be one printed in the same county, if none, then in such as the court or judge may direct, once a week for two (2) consecutive weeks. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received, and the lands and tenements to be sold must be described therein with common certainty. The day fixed for sale must be within ten (10) days from the day of the last publication of notice, and the sale must not be made before the day so fixed, but must be made within six (6) months thereafter. The bids or offers must be in writing and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the clerk of court to which the return of sale must be made, at any time after the first publication of the notice, and before the making of the sale. If it be shown that it will be for the best interests of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than ten [10], in which case the notice of sale and the sale may be made to correspond with such order.

History: En. Sec. 198, p. 292, L. 1877; re-en. Sec. 198, 2nd Div. Rev. Stat. 1879; re-en. Sec. 198, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2682, C. Civ. Proc. 1895; re-en. Sec. 7573, Rev. C. 1907; re-en. Sec. 10222, R. C. M. 1921; amd. Sec. 1, Ch. 170, L. 1951. Cal. C. Civ. Proc. Sec. 1549.

Amendment

The 1951 amendment inserted the provision that the notice must be posted at least ten days before date of sale, provided that the newspaper publication should be "once a week for two (2) consecutive weeks" instead of "two weeks successively next before the day on or after which the sale is to be made" provided that the date of sale must be within ten days from day of last publication instead of at least fifteen days from first publication, substituted the provision that the court might fix the time for sale on or after a day less than ten for a provision that the court might fix a day less than fifteen but not less than eight days after first publication and made other minor changes in wording.

Repealing Clause

Section 2 of Ch. 170, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 170, L. 1951 provided the act should be in effect on and after its passage and approval. Approved March 1, 1951.

Irregularity Not Attacked in Collateral Proceeding

Although publication of notice of sale of real estate did not comply with the provisions of the statute, where jurisdiction had attached, the irregularity could not be attacked in a collateral proceeding. Haugan v. Yale Oil Corp., 124 M 1, 217 P 2d 1084, 1086.

91-3016. (10225) **Return of proceedings—notice of hearing, etc.**

Vacation of Sale on Objection of Heirs

Where sale of land was made by oral agreement with administrator without confirmation of court, and thereafter to clear title a petition for sale of land was filed and bids were received, one by the purchaser for the amount so paid and one from another party for more than twice the amount bid by the purchaser, and sale was confirmed in such purchaser, such sale and judgment of confirmation were void on objection of the heirs although no fraud was practiced, the heirs not being parties to the proceeding. Larson v. Whitmer, 124 M 399, 224 P 2d 983, 986.

CHAPTER 31—MORTGAGING AND LEASING REAL ESTATE

Section 91-3102. Manner of obtaining authority to mortgage—petition, contents and filing.
91-3108. Leasing—procedure to procure order—provisions and terms—execution—effect.

91-3102. (10250) **Manner of obtaining authority to mortgage—petition, contents and filing.** To obtain an order to mortgage such realty, the proceedings to be taken and the effect thereof must be as follows:

The executor, administrator, or any person interested in the estate may file a verified petition showing: The particular purpose or purposes for which it is proposed to make the mortgage, which shall be either to pay the debts, legacies, or charges of administration, or to pay, reduce, extend, or renew some lien or mortgage already subsisting on said realty, or some part thereof, and to pay, reduce, extend or renew the payment of the promissory note secured by such lien or mortgage; a statement of the debts, legacies, charges of administration, liens, or mortgages to be paid, reduced, extended, or renewed, as the case may be; the advantage that may accrue to the estate from raising the required money by mortgage, or providing for the payment, reduction, extension, or renewal of the subsisting liens, or mortgages, as the case may be; the amount to be raised, with a general description of the property proposed to be mortgaged; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner.

History: En. Sec. 2721, C. Civ. Proc. 1895; re-en. Sec. 7601, Rev. C. 1907; re-en. Sec. 10250, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1955. Cal. C. Civ. Proc. Sec. 1578.

Amendment

The 1955 amendment inserted the words "and to pay, reduce, extend or renew the payment of the promissory note secured by such lien or mortgage" which appear after the words "or some part thereof" in the second paragraph.

Repealing Clause

Section 2 of Ch. 62, Laws 1955 repealed all acts and parts of acts in conflict therewith.

91-3108. (10256) **Leasing—procedure to procure order—provisions and terms—execution—effect.** To obtain an order to lease the realty, the proceedings to be taken and the effect thereof shall be as follows:

1. The executor, administrator, or any person interested in the estate, may file a verified petition showing: The advantage or advantages that may accrue to the estate from giving a lease; a general description of the property proposed to be leased; the term, rental, and general conditions of the proposed lease; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner.

2. Upon filing such petition an order must be made by the court or judge, requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than two nor more than four weeks thereafter, then and there to show cause why the realty (briefly indicating it) should not be leased for the period (stating it), at the rental mentioned in the petition (stating it), and referring to the petition on file for further particulars.

3. The order to show cause must be personally served on the persons residing in the county interested in the estate, at least ten days before the

time appointed for hearing the petition, or be published for two successive weeks in a newspaper of general circulation published in the county.

4. At the time and place appointed in the order to show cause, or such other time and place to which the hearing may be postponed, the court or judge having first received satisfactory proof of personal service or publication of the order to show cause, must proceed to hear the petition, and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to attend and testify in the same manner and with like effect as in other cases, and the court or judge may, in its or his discretion, appoint one or more, not exceeding three, disinterested persons to appraise the rental value of the premises, and direct that a reasonable compensation for their services, not to exceed five dollars per day, be paid by the estate. If, after a full hearing, the court or judge is satisfied that it will be for the advantage of the estate to lease the whole or any portion of the real estate, an order must be made authorizing, empowering, and directing the executor or administrator to make such lease. The order may prescribe the minimum rental to be received for the premises, and the period of the lease, which must in no case be longer than for ten years, except that a lease or contract providing for the exploration of the premises for oil, gas or hydrocarbons may provide for a term of ten years and for as long thereafter as oil, gas or hydrocarbons shall be produced in commercial quantities, and may prescribe the other terms and conditions of such lease.

5. After the making of the order to lease, the executor or administrator must execute, acknowledge, and deliver a lease of the premises, for the rent, and period, and with the conditions specified in the order, such lease before it shall become effective shall be approved by the court or judge thereof before delivery, setting forth in the lease that it is made by authority of the order, and giving the date of such order. A certified copy of the order shall be recorded in the office of the county clerk of every county in which the leased land, or any portion thereof, lies.

6. Every lease so made shall be effectual to demise and let, at the rent, for the term, and upon the conditions prescribed therein, the premises described therein. Jurisdiction of the court to administer the decedent's estate shall be effectual to vest such court and judge with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee, his heirs and assigns. No omission, error, or irregularity in the proceedings impairs or invalidates the same, or the lease made in pursuance thereof.

History: En. Sec. 2722, C. Civ. Proc. 1895; re-en. Sec. 7602, Rev. C. 1907; re-en. Sec. 10256, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1923; amd. Sec. 1, Ch. 156, L. 1953. Cal. C. Civ. Proc. Sec. 1579.

Amendment

The 1953 amendment raised the term for which realty may be leased from five to ten years and substituted "and" for "or" which appears before the words "for as long thereafter" in the last sentence of subdivision 4.

Repealing Clause

Section 2 of Ch. 156, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 32—GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

91-3205. (10261) Surviving partner to settle up business, etc.

Inheritance Tax

Real property and tangible personal property retains its status as such upon the death of a partner and is not exempt from inheritance tax under section 91-4413 as intangible property. In re Perry's Estate, 121 M 280, 192 P 2d 532, 537.

When Partnership Property Becomes Part of Estate

Until the affairs of the partnership have been settled the partnership property is not property of the estate of the deceased party to be administered as such. In re Perry's Estate, 121 M 280, 192 P 2d 532, 537.

References

Cited or applied in McNaught v. Weyh, 128 M 418, 276 P 2d 491, 495.

CHAPTER 33—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS

91-3312. (10279) Validation of sales—curative deeds.

Operation and Effect

Where jurisdiction has attached, an irregularity in a subsequent proceeding cannot be assailed except upon appeal or a direct action of annulment. Haugan v. Yale Oil Corp., 124 M 1, 217 P 2d 1084, 1087.

CHAPTER 34—LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS

91-3405. (10285) Expenses allowed executor or administrator, etc.

Attorney's Fees

Attorney fees which are for services rendered in defending actions for the removal of the administrator are not chargeable against the estate because they are not for the benefit of the estate but rather are for the interest and benefit of the administrator personally. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 403.

Necessary Expenses

Traveling expenses incurred by an administrator will not be allowed unless it is shown that such travel was necessary for the care, management, or settlement of the estate and that it was necessary to make the trips in question rather than use the mail. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 402.

The administrator and court are bound to "exercise the highest diligence and to limit expenditures with a wise prudence and economy," therefore it is not an abuse of discretion for the court to disallow storage charged for a car for $123.75 when the car had an appraised value of $75 and was later sold for $30. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 403.

References

Cited in In re Sikorski's Estate, 127 M 563, 268 P 2d 395, 399; Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1037.

91-3407. (10287) Compensation of executors and administrators.

What is Included in Estate Upon Which Compensation is Based

Where the administratrix has expenses of $10 filing fee and $4.82 for sheriff's fee for serving subpoenas in an action to defend her position as administratrix; these items when recovered in a cost bill in that action can not be credited to the estate as an asset and thus increase the assets of the estate on which to base compensation for services. In re Ruane's Estate, 125 M 204, 233 P 2d 400, 404, 405.

References

Cited in In re Sikorski's Estate, 127 M 563, 268 P 2d 395, 399; Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1037.

CHAPTER 35—ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS

91-3501. (10288) Exhibit of receipts and disbursements, etc.

Account

Where the court ordered the administrator to account, an "Affidavit of Report of Administrator" wherein the administrator sought to excuse his failure to close the estate is not what the statutes call for because it does not show the "amount of money received and expended by him" and it does not justify the administrator's failure to account at all. State ex rel. Adamson v. District Court, — M —, 279 P 2d 691, 693.

91-3507. (10294) To render accounts after notice to creditors.

References

Cited or applied in State ex rel. Adamson v. District Court, — M —, 279 P 2d 691, 692.

91-3512. (10299) Day of settlement to be appointed and notice thereof.

Cross-Reference

See note to sec. 91-3513. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

91-3513. (10300) When settlement is final, notice must so state, etc.

Postponement of Hearing on Final Account

Where, after proper notice, administrator filed his final account and petition for final distribution, and after objections were filed postponed the hearing, no further notice was required before approval of the supplemental account and order for distribution differing from that first proposed. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

91-3514. (10301) Interested party may file exceptions to account.

Cross-Reference

See note to sec. 91-3513. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

References

Cited or applied in State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866, 867.

91-3515. (10302) All matters may be contested by the heirs—hearing.

Cross-Reference

See note to sec. 91-3513. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

91-3516. (10303) Settlement of accounts to be conclusive, etc.

Cross-Reference

See note to sec. 91-3513. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

Court Loses Jurisdiction After Sixty Days

In the absence of proper and timely challenge the court loses jurisdiction to grant any relief under the provisions of this section. State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866, 868.

Effect of Fraud

Where proper notice was given of settlement of final account and petition for distribution of estate, heir or legatee could not, more than six months after settlement of final account and order for distribution of estate, have judgment set aside on ground of fraud. State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866.

CHAPTER 36—DEBTS OF THE ESTATE—PAYMENT OF

91-3604. (10310) Funeral expenses, expenses of last sickness, etc.

Family Allowance

Administratrix was not required to pay family allowance when there were not sufficient funds in the estate to pay same. In re Hall's Estate, 124 M 355, 224 P 2d 138, 139.

CHAPTER 38—DETERMINATION OF HEIRSHIP AND INTEREST IN ESTATE

Section 91-3801. Proceedings to determine heirship.
91-3802. Appearance of parties.

91-3801. (10324) **Proceedings to determine heirship.** Any person claiming to be heir to the deceased, or entitled to the distribution in whole or in part of an estate may, at any time after the issuing of letters testamentary or of administration upon such estate, file a petition in the matter of such estate, praying the court or judge to ascertain and declare the rights of all persons to said estate, and all interests therein, and to whom distribution thereof should be made. Upon the filing of such petition, the court or judge must make an order directing service of notice to all persons interested in said estate, to appear and show cause, on a day to be therein named, not less than sixty [60] days nor more than four [4] months from the date of the making of such order, in which notice shall be set forth the name of the deceased, the name of the executor or administrator of said estate, the names of all persons who may have appeared claiming any interest in said estate, in the course of the administration of the same, up to the time of the making of said order, and such other persons as the court or judge may direct, including the state of Montana by service upon the attorney general, and also a description of the real estate whereof said deceased died seized or possessed so far as known, described with certainty to a common intent; and requiring said persons, and all persons named or not named having or claiming any interest in the estate of said deceased, at the time and place in said order specified, to appear and exhibit, as hereinafter provided, their respective claims of heirship, ownership, or interest in said estate, to said court or judge, which notice shall be served in the same manner as a summons in a civil action; upon proof of which service, by affidavit or otherwise, to the satisfaction of the court or judge, the court or judge shall thereupon acquire jurisdiction to ascertain and determine the heirship, ownership, and interest of all parties in and to the property of said deceased, and such determination shall be final and conclusive in the administration of said estate, and of the title and ownership of said property, the court or judge must enter an order establishing proof of the service of such notice; if it shall appear to the satisfaction of the court or judge that no issue has been joined relative to heirship, then it shall not be necessary in such estate to file a complaint under the provisions of section 91-3802 and the court or judge shall thereupon enter a decree determining heirship, except in such estates in which nonresident alien heirs are entitled to a distributive share of the estate, in which event and before the entry of a decree determining heirship the court shall proceed to a hearing upon the determination of the question of reciprocity between the foreign country of which the nonresident alien heir is a resident and the United States as provided by section 91-520. Further, in all estates in which the decedent left a will, it shall be unnecessary to determine heirship but this shall not relieve any nonresident alien heirs, legatees and/or devisees from satisfactorily establishing their identity and proving that reciprocity exists between the country in which the nonresident alien legatee or devisee resides and the United States as provided

under the provisions of section 91-520; provided, that whenever it appears to the satisfaction of the court or judge that such estate consists of personal property only, and upon application being made showing good reason therefor, the court or judge may, in its discretion, make an order directing service of said notice to all persons interested in said estate to be made by posting or publication, or both, for such shorter period as to the court or judge may appear proper and requisite.

History: En. Sec. 2840, C. Civ. Proc. 1895; re-en. Sec. 7670, Rev. C. 1907; amd. Sec. 1, Ch. 234, L. 1921; re-en. Sec. 10324, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1951. Cal. C. Civ. Proc. Sec. 1664.

Amendment

The 1951 amendment inserted the words "including the state of Montana by service upon the attorney general" in the second sentence, added that part of the second sentence following the third semi-colon and added that part of the third sentence preceding the semi-colon.

Repealing Clause

Section 2 of Ch. 28, L. 1951 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Uniform Simultaneous Death Act, secs. 91-423 to 91-430.

References

Cited or applied in In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 659.

91-3802. (10325) **Appearance of parties.** All persons appearing within the time limited must file their written appearance in person or through their authorized attorney, such attorney filing at the same time written evidence of his authority to so appear, which written evidence must be in the English language, or if in a foreign language, the same must be accompanied by an English translation thereof, duly certified as correct by a United States consul, entry of which appearance shall be made in the minutes of the court and in the register of proceedings of said estate. And the court or judge shall, after the expiration of the time limited for appearing as aforesaid, enter an order adjudging the default of all persons for not appearing as aforesaid, who shall not have appeared as aforesaid. At any time within twenty [20] days after the date of the order of the court or judge establishing proof of service of such notice, any of such persons so appearing may file his complaint in the matter of the estate, setting forth the facts constituting his claim of heirship, ownership, or interest in said estate, with such reasonable particularity as the court or judge may require, and serve a copy of the same upon each of the parties or attorneys who shall have entered their written appearance as aforesaid, if such parties or such attorneys reside within the county; in all estates in which a nonresident alien heir, legatee and/or devisee has or may have an interest in a decedent's estate, the state of Montana shall be considered a necessary party and must be personally served by serving a copy of the complaint and order on the attorney general; and in case any of them do not reside within the county, then service of such copy of said complaint shall be made upon the clerk of said court for them, and the clerk shall forthwith mail the same to the address of such party or attorney as may have left with said clerk his post-office address. Such parties are allowed twenty [20] days after the service of the complaint, as aforesaid within which to plead thereto, and thereafter such proceedings shall be had upon such complaint as in this code provided in case of an ordinary civil action; and the issues of law and of fact arising in the proceeding shall be disposed of

in like manner as issues of law and fact are herein provided to be disposed of in civil actions, with a like right to a motion for a new trial and appeal to the supreme court; and the provisions in this code contained, regulating the mode of procedure for the trial of civil actions, the motion for a new trial of civil actions, statements on motion for a new trial, bills of exceptions and statements on appeal, as also in regard to undertakings on appeal, and the mode of taking and perfecting appeals, and the time within which such appeals shall be taken, shall be applicable thereto; provided, however, that all appeals herein must be taken within sixty [60] days from the date of the entry of the judgment or the order complained of.

History: En. Sec. 2841, C. Civ. Proc. 1895; re-en. Sec. 7671, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1913; re-en. Sec. 10325, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1951.

Amendment

The 1951 amendment inserted the clause between the first and second semicolons in the third sentence relating to nonresident alien heirs.

Repealing Clause

Section 2 of Ch. 29, L. 1951 repealed all acts and parts of acts in conflict therewith.

Authority of Attorney

Where written authority of attorneys was on file it was unnecessary that the attorneys refile their written authority on the day set for their appearance. In re Swayze's Estate, 120 M 546, 191 P 2d 322, 328.

CHAPTER 39—FINAL DISTRIBUTION OF ESTATE—DISCHARGE OF EXECUTOR OR ADMINISTRATOR

Section 91-3901. Distribution of estate—how made and to whom.

91-3901. (10327) **Distribution of estate—how made and to whom.** 1. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, legatee, or devisee, the court or judge must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to be [by] inheritance must, without administration, be distributed to the other heirs at law; provided, that whenever it appears any of the persons claiming to be heirs, or claiming a right to share in said estate, are nonresidents of the United States, then a proceeding to determine their rights shall be held under the provisions and as provided for in the three preceding sections with reference to the determination of heirship.

2. Whenever all the heirs or devisees of any estate who are residents of the United States shall agree that any nonresident of the United States is a lawful heir or devisee of said estate and is lawfully entitled to share therein, said agreement may be reduced to writing and filed with the clerk of the court in the matter of said estate, and thereafter it shall not be necessary for any such nonresident heir or devisee to institute any proceedings to determine his rights of heirship.

3. The provisions of subdivision 2 shall dispense with the proceedings provided for by section 91-3801, insofar as such section relates to establish-

ing heirship, but shall not dispense with the necessity of establishing proof of reciprocity as required in estates in which nonresident aliens are claiming as heirs, legatees and/or devisees.

4. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution; and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court or judge, and included in the order; or the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

History: En. Sec. 289, p. 315, L. 1877; re-en. Sec. 289, 2nd Div. Rev. Stat. 1879; re-en. Sec. 289, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2843, C. Civ. Proc. 1895; re-en. Sec. 7673, Rev. C. 1907; amd. Sec. 2, Ch. 54, L. 1913; amd. Sec. 2, Ch. 234, L. 1921; re-en. Sec. 10327, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1951. Cal. C. Civ. Proc. Sec. 1665.

Compiler's Note

The bracketed word "by" was inserted by the compiler.

Amendment

The 1951 amendment added the provisions of subsection 3.

Repealing Clause

Section 2 of Ch. 54, L. 1951 repealed all acts and parts of acts in conflict therewith.

References

Cited or applied in In re Spoya's Estate, — M —, 282 P 2d 452, 454.

Personal liability of executor or administrator for interest on legacies or distributive shares where payment is delayed. 18 ALR 2d 1384.

Right of widow of an heir to dower, where heir dies before decedent's estate is closed. 23 ALR 2d 961.

91-3902. (10328) Order of distribution, contents and finality of.

Finality of Decree

In the absence of fraud, a decree of distribution made upon due notice is conclusive of the rights of heirs as against collateral attack. Harrison v. Cannon, 122 M 318, 203 P 2d 978, 980.

Where a decree of distribution was entered on an estate and no appeal was taken from such decree, an affidavit thereafter filed and recorded stating that the affiant was an heir and devisee of the will and claiming an interest in the real estate distributed, was void on its face and constituted no cloud on the title to the land. Hart v. Barron, 122 M 350, 204 P 2d 797, 805.

Fraud—Effect

Where proper notice was given of settlement of final account and petition for distribution of estate, heir or legatee could not, more than six months after settlement of final account and order for distribution of estate, have judgment set aside on ground of fraud. State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866.

91-3904. (10330) Decree to be made only after notice.

Postponement of Hearing

Where, after proper notice, administrator filed his final account and petition for final distribution, and after objections were filed postponed the hearing, no further notice was required before approval of the supplemental account and order for distribution differing from that first proposed. Harrison v. Cannon, 122 M 318, 203 P 2d 978.

CHAPTER 40—PARTITION OF UNDIVIDED ESTATES AFTER DISTRIBUTION

91-4006. (10339) Whole estate may be assigned to one, in certain cases.

Setting Aside of Commissioners' Report

Where the commissioners appraised real property and found its true value to be $15,000 but at the hearing on the report there were objections thereto and two persons made offers of $25,000, the court

should have set aside the commissioners' findings. In re Moran's Estate, 128 M 189, 273 P 2d 671, 674.

References

Cited or applied in In re Moran's Estate, 128 M 189, 273 P 2d 671, 674.

91-4010. (10343) To make report, and partition to be recorded.

Operation and Effect

The judge must, if the report is just and proper, confirm the commissioners' report, but likewise the judge may, if sufficient reasons appear therefor, set aside the report. Where the commissioners appraised the property and found its true value to be $15,000 but at the hearing on the report there were two offers of $25,000, the court should have set aside the commissioners' findings. In re Moran's Estate, 128 M 189, 273 P 2d 671, 674.

CHAPTER 43—PROBATE PROCEEDINGS, MISCELLANEOUS—CITATIONS —APPEALS, ETC.

91-4311. (10365) Rules of practice generally.

Operation and Effect

Civil actions in the courts of record of this state are commenced by filing a complaint under section 93-3001 and since, under the provisions of this section, the same rule is made applicable to a proceeding for the administration of the estate of a deceased person, such proceeding is commenced by the filing of the initial petition seeking judicial remedies administered by a court or judge exercising probate jurisdiction. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 550.

91-4313. (10367) Within what time appeal must be taken.

Operation and Effect

The provisions of this section are mandatory and jurisdictional. State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 695.

Time for Taking Appeal

The notice of appeal, being jurisdictional, must be filed and served within the time prescribed and the courts cannot lawfully extend the time nor excuse a failure to comply with the statute. Where, as here, an application for a new trial is not prerequisite to review by appeal, the filing of a motion for a new trial does not have the effect of extending the statutory period prescribed for the giving of notice of appeal. Neither is such time extended by a motion for relief from the judgment on the ground of mistake, inadvertence or excusable neglect. State ex rel. Reid. v. District Court, 126 M 489, 255 P 2d 693, 698.

91-4316. (10370) Court to appoint attorney for minor or absent heirs, etc.

Failure to Appoint Attorneys—Effect

Fact that no attorneys were appointed to represent minors in proceeding for sale of real estate did not affect the validity of the proceedings. Haugan v. Yale Oil Corp., 124 M 1, 217 P 2d 1084, 1087.

91-4322. (10376) Power of clerk to issue orders and notices.

Collateral Attack

Objection that clerk in appointing executor was usurping judicial powers was not available on collateral attack. Hinton v. Staunton, 124 M 534, 228 P 2d 461, 464.

CHAPTER 44—INHERITANCE TAX

Section 91-4402. Transfers in contemplation of death.
91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property.
91-4407. Tax on clear market value—deductions.
91-4414. Exemptions from first $25,000.
91-4415. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.

91-4421. Payment of tax on transfer of securities by foreign representative —duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given board of equalization—amount of tax to be retained on delivery of assets —penalties.
91-4423. Jurisdiction of district court—notice to state board required before hearing.
91-4430. Notice of hearing.

91-4401. (10400.1) Taxes on transfer—when and how imposed.

Effect of Owner of Real Property Being a Resident of a Community Property State

Where the decedent was a resident of California and had used community property funds to purchase land in Montana, there was still an inheritance tax due on the whole of the land value in Montana when it was devised to his wife. She did not have an undivided one-half interest in the Montana land by virtue of the California community property laws, since the effect of the community property laws does not vest title in her automatically but it does enlarge her "bundle of right." (See, however, the dissenting opinion of two judges.) In re Hunter's Estate, 125 M 315, 236 P 2d 94, 99.

References

Cited or applied in State v. Hanson, 125 M 174, 232 P 2d 342, 346.

Succession, estate, or inheritance tax as affected by compromise of will contest. 36 ALR 2d 917.

Construction and application of statutes apportioning or prorating estate taxes. 37 ALR 2d 199.

91-4402. Transfers in contemplation of death. When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within three (3) years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without a fair consideration in money or money's worth shall, unless shown to the contrary be deemed to have been made in contemplation of death within the meaning of this section, but no such transfer by deed, grant, bargain, sale or gift, made before such three-year period shall be treated as having been made in contemplation of death providing, however, that nothing herein contained shall be deemed to have modified, amended, or repealed the provisions of section 91-4408 of the Revised Codes of Montana, 1947.

History: En. Sec. 1 (part), Ch. 65, L. 1923; amd. Sec. 1 (part), Ch. 150, L. 1925; amd. Sec. 1 (part), Ch. 105, L. 1927; amd. Sec. 1 (part), Ch. 186, L. 1935; amd. Sec. 1, Ch. 269, L. 1955.

Amendment

The 1955 amendment added all that part of the second sentence beginning with the words "but no such transfer * * *."

Deed in Escrow

Where deed to hotel property was deposited in escrow and the agreement required the grantee, a stranger, to pay certain specified amounts monthly for a period of three years after which he was to pay a certain amount monthly for the remainder of the lifetime of the grantor which amount was not disproportionately less than the value of the property and the grantee was to have immediate possession, make repairs and carry insurance on the property, there was not a taxable transfer of property in contemplation of death. In re Sebree's Estate, 122 M 509, 206 P 2d 553.

Determination of Whether or Not Gift is in Contemplation of Death

Generally, the test to be applied is to ascertain the dominant motive of the donor in the light of his bodily and mental condition, and "the best evidence of the decedent's state of mind at the time and the reasons for making the transfers are the statements and expres-

sions of the decedent himself." In re Warren's Estate, 128 M 395, 275 P 2d 843, 844.

Gifts Not in Contemplation of Death

Where decedent after forming a corporation for the operation of his farm transferred some of the stock to members of his family who had been working on the farm and evidence disclosed that it was because he had offered them a share in the business if they worked in it, the gifts were not in contemplation of death and were made for purposes associated with life rather than with death. In re Warren's Estate, 128 M 395, 275 P 2d 843, 844.

Joint Bank Account

Where money, solely the property of one person, was deposited in a joint bank account payable either to her or the other person without consideration, and such deposit was made within three years of the death of the person, half of the account was a gift in contemplation of death and taxable under this section, and after the death of the person, the half then received by right of survivorship is taxable under section 91-4405. State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989.

United States Savings Bonds

Where person with her own funds purchased Series G United States savings bonds payable to her or in the alternative to another person named on the bonds and she retained control of the bonds they were not "held in the joint names of two or more persons" within the meaning of section 91-4405, and they amounted to a transfer to take effect at or after death taxable at their full market value under this section. State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989, 997.

For there to be an absolute inter vivos gift and not taxable as a transfer in contemplation of death, there must be the expiration of the presumptive period and an absence of proof to the contrary. If there is no delivery to the cotenant, the transfer is one to take effect at or after death and taxable as such. In re Marsh's Estate, 125 M 239, 234 P 2d 459, 462.

References

Cited or applied in In re McAnelly's Estate, 127 M 158, 258 P 2d 741, 748.

Transfer by inter vivos trust of insurance policies upon settlor's life as in contemplation of death for tax purposes. 17 ALR 2d 787.

91-4403. Tax—when imposed.

Law Applicable

Where trust was created in the year 1915 under which certain persons were to receive portions of the trust funds on the death of settlor of the trust who died in 1945, the transfer, for inheritance tax purposes, was to be taxed at the rate in existence in 1945 and not at the rate in existence in 1915. In re Kohr's Estate, 122 M 145, 199 P 2d 856, 5 ALR 2d 1046.

91-4404. Transfers under power of appointment.

Inheritance, succession, or estate tax on property covered by power of appointment as affected by location of property, or residence of parties, outside the taxing state or country. 19 ALR 2d 1415.

91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, inscribed in co-ownership form, or held in joint tenancy by two [2] or more persons, or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two [2] or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common, and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and

never to have belonged to the decedent. This section shall not be construed to repeal or modify the provisions of section 91-4402, Revised Codes of Montana, 1947.

History: En. Sec. 1 (part), Ch. 65, L. 1923; amd. Sec. 1 (part), Ch. 150, L. 1925; amd. Sec. 1 (part), Ch. 105, L. 1927; amd. Sec. 1 (part), Ch. 186, L. 1935; amd. Sec. 1, Ch. 181, L. 1951.

Amendment

The 1951 amendment revised the wording of this section, adding the last sentence and changing the description of the property to which the section applies, the former description being "any property, real or personal * * * held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor."

Repealing Clause

Section 2 of Ch. 181, L. 1951 repealed all acts or parts of acts in conflict therewith, except as provided in that act.

Effective Date

Section 3 of Ch. 181, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 1, 1951.

Cross-Reference

See annotations to sec. 91-4402. State Board of Equalization v. Cole, 122 M 9, 195 P 2d 989.

Construction

The exception at the end of this section means "except such part of the decedent's fractional share of the property thus deemed to be bequeathed or devised by will as may be shown to have originally belonged to the survivor and never to have belonged to the decedent prior to the creation of the joint tenancy." In re Kuhr's Estate, 123 M 593, 220 P 2d 83, 85.

Entire Estate Property of Surviving Spouse—No Tax Due

Where property held in joint tenancy by husband and wife was purchased with the funds of the surviving husband, no inheritance tax was due on such property. In re Kuhr's Estate, 123 M 593, 220 P 2d 83, 85.

Operation and Effect

Where a husband and wife purchase land jointly and the funds come from a joint bank account to which it can be shown that the husband originally contributed all the money, one-half of the realty is considered the wife's share upon her death and it is subject to the tax imposed by this section. The fact that the consideration at some previous time came as a gift from one spouse to another is unimportant. In order for the exception in the statute to apply, it must be shown that the immediate joint tenancy originally belonged to the survivor prior to the creation of the immediate joint tenancy. State v. Hanson, 125 M 174, 232 P 2d 342, 344.

In the case of joint bank accounts where it can be shown that the money was originally furnished by the survivor and none by the decedent the account is not taxable for it comes within the exception in this section. State v. Hanson, 125 M 174, 232 P 2d 342, 345.

Where the husband and wife hold a promissory note jointly it is taxable under this section. The property so taxed is the credits or choses in action, the various promissory notes, and that property never had belonged to the survivor prior to its acquisition by the husband and wife. State v. Hanson, 125 M 174, 232 P 2d 342, 346.

In estates where the death occurred before March 1, 1951, the effective date of this section; the tax on government series E and G bonds is generally imposed by section 91-4402. In re Marsh's Estate, 125 M 239, 234 P 2d 459, 462.

United States Savings Bonds

United States savings bonds registered jointly in the name of the decedent and one of her three children and kept in a safe deposit box in the name of the decedent and one of her children to which such daughter had access did not constitute a gift to any of the children, the possession remaining joint and the bonds were taxable. In re Brown's Estate, 122 M 451, 206 P 2d 816, 821.

Government bonds can never be held in tenancy by the entirety, because either cotenant may sell the bonds upon surrender of the bond and receive the full accrued value; while the very characteristic that distinguishes the tenancy by the entirety from other cotenancies is that neither of the cotenants alone can terminate the tenancy or sever the estate. In re Marsh's Estate, 125 M 239, 234 P 2d 459, 461, 462.

References

Cited or applied in In re McAnelly's Estate, 127 M 158, 258 P 2d 741, 748; State ex rel. Simon v. District Court, 128 M 454, 277 P 2d 534, 535 (dissenting opinion).

State inheritance, estate or succession tax on United States savings bond. 39 ALR 2d 706.

91-4406. Insurance part of estate.

Matured Endowments Left With Insurer

Proceeds of life insurance policies which have matured as endowments and which are left with the insurance company at a fixed rate of interest, the principal sum payable at death, in accordance with one of the optional modes of settlement, are not exempt under the insurance exemption of this section. In re Harper's Estate, 124 M 52, 218 P 2d 927.

91-4407. Tax on clear market value—deductions. The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation or body politic, at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation or body politic, and in determining the clear market value of the property so passing by any such transfer the following deductions, and no other shall be allowed; debts of the decedent owing at the date of death, expenses of funeral and last illness, all Montana state, county, municipal and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death, the ordinary expenses of administration, including the commissions and fees of executors and administrators and their attorneys actually allowed and paid, and federal estate taxes due or paid.

History: En. Sec. 1 (part), Ch. 65, L. 1923; amd. Sec. 1 (part), Ch. 150, L. 1925; amd. Sec. 1 (part), Ch. 105, L. 1927; amd. Sec. 1 (part), Ch. 186, L. 1935; amd. Sec. 1, Ch. 5, L. 1957.

Amendment

The 1957 amendment substituted the words "all Montana state, county, municipal and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death" for the words "all state, county and municipal taxes which are a lien against property situated in this state at the date of death."

Effective Date

Section 2 of Ch. 5, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 7, 1957.

Construction

The words "actually allowed and paid" as used in the statute do not relate to the ordinary expenses of administration. In re Warren's Estate, 128 M 395, 275 P 2d 843, 846.

Operation and Effect

This statute is clear and direct and declares no deduction shall be allowed except those specified therein. In re McAnelly's Estate, 127 M 158, 258 P 2d 741, 748.

Ordinary Expenses

While ordinarily the appraisers are the ones who fix the value of the property of an estate, where the estate consists of stock in a closely held corporation, the services of an accountant may become necessary to determine the fair market value of the stock and the cost of such services are an ordinary expense in the administration of the estate. In re Warren's Estate, 128 M 395, 275 P 2d 843, 846.

Valuation of corporate stock for purposes of succession, inheritance, or estate tax, as affected by quantity involved. 23 ALR 2d 775.

DECISIONS UNDER FORMER LAW

Interest on Federal Estate Tax

Interest on federal estate tax is not deductible under this section since it is not mentioned. The statute is clear and direct and declares no deduction shall be allowed except those specified therein. In re McAnelly's Estate, 127 M 158, 258 P 2d 741, 748.

91-4413. Exemption of intangible personal property, etc.

Partnership Property

When partnership is settled and the debts are paid, the real estate of the partnership retains its character as such and is not tax exempt as intangible property. In re Perry's Estate, 121 M 280, 192 P 2d 532, 537.

As to personal property of a partnership, only so much thereof as is necessary to discharge the duties imposed on the survivor passes to him and the balance of the partnership property should be divided between the surviving partners and the heirs of the deceased partner, which retains its character as tangible property and is not tax exempt. In re Perry's Estate, 121 M 280, 192 P 2d 532, 538.

91-4414. (10400.4) **Exemptions from first $25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, or to corporations or voluntary associations of this state organized under its laws solely for religious, charitable, educational or other public purposes, which shall use the property so transferred exclusively for the purpose of their organization within the state, and all transfers to any privately owned hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated, shall be exempt.

(2) $17,500; $5,000; $2,000 exempt, when. Property of the clear value of seventeen thousand five hundred dollars, transferred to the wife, or five thousand dollars transferred to the husband of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the widow shall include all her statutory dower and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which shall thereafter be transferred by or from such widow to any such child, provided the widow does not survive said decedent to exceed ten years.

(3) $500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

History: En. Sec. 4, Ch. 65, L. 1923; amd. Sec. 1, Ch. 105, L. 1953.

Amendment

The 1953 amendment inserted the words "and all transfers to any privately owned hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated" after the words "within the state" appearing near the end of subsection (1).

Repealing Clause

Section 2 of Ch. 105, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 105 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

91-4415. (10400.5) **When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten [10] years from the time of the death of the decedent unless sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall make triplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax, with the amount thereof, and the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts. One he shall keep on file in his office.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419.

History: En. Sec. 5, Ch. 65, L. 1923; amd. Sec. 1, Ch. 16, L. 1951.

Amendment

The 1951 amendment substituted "for a period of ten years from the time of the death of the decedent unless sooner paid" for "until paid."

Repealing Clause

Section 2 of Ch. 16, L. 1951 repealed all acts or parts of acts in conflict therewith.

91-4421. (10400.11) **Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given board of equalization—amount of tax to be retained on delivery of assets—penalties.** (1) If a foreign executor, administrator, or trustee shall assign or transfer any stocks, bonds, mortgages, or other securities, in this state, or within the jurisdiction of this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

(2) No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any corporation organized under the laws of this state, in which a nonresident decedent held stock, bonds, mortgages, or other securities, at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless

notice of the time and place of such intended transfer be served upon the state board of equalization at least ten (10) days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the state board of equalizating, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The state board of equalization may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the said board that no tax is due thereon; provided, however, that the foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945, and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to section 91-4413, Revised Codes of Montana, 1947, and in such event this subsection (2) shall not apply to the transfer of stocks, bonds, mortgages or other securities exempt from taxation under the provisions of section 91-4413, and a Montana corporation, or its agent, may transfer stocks, bonds, mortgages and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in section 91-4413, and in such event no application for consent to transfer such stock need be made to the state board of equalization of the state of Montana, and the corporation, or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

(3) Whenever a tax may be due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property, when the property or the estate left by such decedent is partly within and partly without this state, or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate shall be entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state, but no deduction shall be made for any federal estate, inheritance, succession or transfer taxes paid to the United States. As to his Montana exemption, each beneficiary shall be entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate.

(4) The state board of equalization shall require such reports and information and shall make such orders, rules, and regulations as it may deem necessary to enable the said board to secure the necessary information from domestic corporations, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of this act on account of such transfer, except upon order of the proper court or a certificate of consent of the state board of equalization.

(5) Any corporation or holding company violating the provisions of this section shall be liable to the state for the amount of the tax together with a penalty of ten per centum (10%) thereof.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; amd. Sec. 1, Ch. 62, L. 1953.

Amendment

The 1953 amendment inserted the number "(10)" in subsection 2 and added the proviso in that subsection.

Repealing Clause

Section 2 of Ch. 62, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 62, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

91-4423. (10400.13) **Jurisdiction of district court—notice to state board required before hearing.** The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two [2] or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court.

Before any decree determining inheritance tax in any estate shall be made by the court, the court shall require proof that due notice has been given to the state board of equalization before the hearing upon the petition to have inheritance tax determined, whether such hearing be at the time of the hearing on the final account or otherwise; and the court shall likewise require proof that a copy of such petition has been given to the board not later than the time of giving the notice; and, before the time fixed in said notice, said board shall cause to be filed, with the clerk of the district court, a certificate signed by the board stating that the amount of the inheritance tax determined to be due the state of Montana as appearing in the report or petition, has been properly computed therein or, if no tax is due, such certificate shall so state; and, if the board shall object to the amount of the tax so computed, the board shall, before the time fixed for the hearing, file with the clerk of the court its written objections thereto,

setting forth therein the nature of the objections. If neither such certificate nor objections shall have been filed at the time fixed for the hearing, it shall be conclusively presumed that the board concurs in the amount so computed.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 1, Ch. 79, L. 1951.

Amendment

The 1951 amendment substituted the last paragraph for a paragraph which read, "Before decree of distribution in any estate shall be issued by the district judge, or the issuance of an order discharging the executor, administrator or trustee of any estate, there shall be filed with the clerk of the district court a certificate signed by the state board of equalization stating that the amount of inheritance tax determined to be due to the state of Montana, as appearing in the order of the court determining tax, has been properly computed, or if no tax is due such certificate shall so state."

Repealing Clause

Section 2 of Ch. 79, L. 1951 repealed all acts and parts of acts in conflict therewith.

91-4430. (10400.20) **Notice of hearing.** Notice of such hearing to determine the inheritance tax shall be given in the same manner and may be included in the notice of hearing the administration account, as provided by law. A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the state board of equalization not less than fifteen (15) days before such hearing, upon notice forms provided by said board and containing such information as it may require.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 5, Ch. 141, L. 1927; amd. Sec. 1, Ch. 80, L. 1949.

Amendment

The 1949 amendment inserted that part of the second sentence to the first comma, substituted "and notice of any such hearing" for "Notice in writing of such hearing," increased the time from ten to fifteen days and substituted "notice forms provided by said board and containing such information as it may require" for "such blanks and containing such information as the state board of equalization may provide."

Repealing Clause

Section 2 of Ch. 80, L. 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 80, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 24, 1949.

91-4434. (10400.24) **Repealed.**

Repeal

This section (Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 5, Ch. 141, L. 1927), relating to inheritance tax on property transferred subject to any charge, estate or interest determinable by death, was repealed by Sec. 1, Ch. 100, Laws 1955.

91-4438. (10400.28) **Rehearing within sixty days.**

Supervisory Control

The Supreme Court was without jurisdiction in State ex rel. Blankenbaker v. District Court, 109 M 331, 96 P 2d 936 to review the record of the proceedings on its writ of supervisory control since the relatrix had a clear and adequate remedy by appeal from the judgment and order fixing the tax which she was required to pay, all duly prescribed by written law, but she failed to avail herself of such remedy and the judgment and order. Hence the opinion, decision and holding of this court in the case of State ex rel. Blankenbaker v. District Court, 109 M 331, 96 P 2d 936, are expressly disapproved and overruled. State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 705.

91-4440. (10400.30) **Collection of unpaid taxes.**

Evidence of Value

Evidence that furniture was old and of little value may be admitted although no answer or reply was filed to controvert the

verified affirmative allegations of the state since only those pleadings enumerated in the statute are necessary. In re Sebree's Estate, 122 M 509, 206 P 2d 553, 555.

CHAPTER 45—GUARDIAN AND WARD

91-4509. (5876) Guardian of property of nonresident person, etc.

Failure to Appoint Attorney for Minor

Fact that no attorneys were appointed to represent minors in proceeding for sale of real estate by administrator of estate did not affect the validity of the proceedings under section 91-4316. Haugan v. Yale Oil Corp., 124 M 1, 217 P 2d 1084, 1087.

91-4515. (5878) Rules of awarding custody of minors.

Operation and Effect

On a hearing of a modification of a decree which awarded the father custody of the minor child, the trial court did not abuse his discretion in denying the motion to modify the decree. While there has been a change of condition surrounding the mother since she has since remarried and maintains a home there was no showing that the father has not taken good care of the infant and there is evidence that the mother hasn't visited the child for some time. Barham v. Barham, 127 M 216, 259 P 2d 805. (See, however, dissenting opinion, 127 M 216, 259 P 2d 805, 807.)

References

Cited or applied in Campbell v. Campbell, 126 M 118, 245 P 2d 847, 850; Oberosler v. Oberosler, 128 M 140, 272 P 2d 1005, 1007; Bayers v. Bayers, — M —, 281 P 2d 506, 508.

91-4524. (5887) Guardian appointed by court—how superseded.

Consideration and weight of religious affiliations in appointment or removal of guardian for minor child. 22 ALR 2d 696.

CHAPTER 46—GUARDIANS OF MINORS

91-4607. (10407) Powers and duties of guardians.

Note to Guardian Individually

Where guardian made loan of guardianship funds and after the running of the statute of limitations a note was made payable to the guardian individually and not in his capacity as guardian, such note nevertheless revived the debt for the benefit of the wards. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 377.

CHAPTER 47—GUARDIANS OF INSANE AND INCOMPETENT PERSONS

Section 91-4704. Petition for restoration to capacity.

91-4701. (10412) Guardians of insane and other incompetent persons.

Notice

Court is without authority to appoint a guardian of the person and estate without service of a notice of the time and place of the hearing of the guardianship petition, and a guardian appointed without such notice is a guardian de facto. Grauman v. Chambers, 122 M 31, 198 P 2d 629, 632.

References

Cited in Emery v. Emery, 122 M 201, 200 P 2d 251, 261.

Priority and preference in appointing guardian of an incompetent. 21 ALR 2d 880.

91-4704. (10415) Petition for restoration to capacity. A person who has been declared insane or incompetent, or the guardian, or any relative of such person within the third degree, or any friend, may apply, by petition, to the district court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The

petition shall be verified, and shall state that such person is then sane or competent. Upon receiving the petition, the court or judge must appoint a day for a hearing before the court, and, if the petitioner request it, shall order an investigation before a jury, which shall be summoned and impaneled in the same manner as juries are summoned and impaneled in civil actions. The court or judge shall cause notice of the trial to be given to the guardian of a person so declared insane or incompetent, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county, and to the superintendent of Montana state hospital in all cases in which the petitioner is on parole from said hospital. On the trial, the guardian or relative of the person declared insane or incompetent, the superintendent of Montana state hospital, and, in the discretion of the court or judge, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court or judge on its or his own motion. If it be found that the person be of sound mind, and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person shall be not a minor, shall cease. The clerk of the court by which such petition is determined shall mail a copy of the order determining the same to the superintendent of Montana state hospital.

History: En. Sec. 2973, C. Civ. Proc. 1895; re-en. Sec. 7767, Rev. C. 1907; re-en. Sec. 10415, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1953. Cal. C. Civ. Proc. Sec. 1766.

Amendment

The 1953 amendment added the words "and to the superintendent of Montana state hospital in all cases in which the petitioner is on parole from said hospital" at the end of the fourth sentence; inserted the words "the superintendent of Montana state hospital" in the fifth sentence; inserted the words "or his" appearing after the words "court or judge on its" in the sixth sentence and added the last sentence.

CHAPTER 48—GUARDIANSHIP OF INCOMPETENT VETERANS, MINORS, AND OTHER BENEFICIARIES OF THE VETERANS ADMINISTRATION

Section 91-4818. Commitment to veterans' administration or other agency of United States government.

91-4818. Commitment to veterans' administration or other agency of United States government.

(1) and (2). * * * [Subdivisions (1) and (2), same as parent volume.]

(3) Upon receipt of a certificate of the veterans' administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore or hereafter committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans' administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans' administration or other agency of the United States if he be confined pursuant to conviction of

any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans' administration or other agency of the United States pursuant to the original commitment.

History: En. Sec. 18, Ch. 58, L. 1943; amd. Sec. 1, Ch. 24, L. 1955.

Amendment

The 1955 amendment in subd. (3) added the words "or hereafter" between the words "heretofore" and "committed."

Repealing Clause

Section 2 of Ch. 24, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 24, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 14, 1955.

References

Cited or applied in State v. Kitchens, — M —, 286 P 2d 1079, 1085; State ex rel. Kitchens v. District Court, — M —, 294 P 2d 907, 911.

CHAPTER 49—GUARDIAN'S POWERS AND DUTIES

Section 91-4911. Procedure to mortgage, lease or grant right of way.

91-4902. (10418) Guardian to recover debts due his ward, etc.

Release of Debt

Where defendant was indebted to a guardianship estate a release executed by the guardian without authorization of the court would not bind the wards after they attained their majority. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 378.

91-4903. (10419) Guardian to manage his estate, maintain ward, etc.

Management of Estate

Guardian is not responsible for loss sustained by holding cattle which were in poor shape for two years in order to obtain better marketing conditions, since the failure of the cattle to improve was due to severe winters and dry summers. Grauman v. Chambers, 122 M 31, 198 P 2d 629.

Note to Guardian Individually

Where guardian made loan of guardianship funds and after the running of the statute of limitations a note was made payable to the guardian individually and not in his capacity as guardian, such note nevertheless revived the debt for the benefit of the wards. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 377.

91-4907. (10423) Settlement of guardians' accounts.

References

Cited in Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1036.

91-4908. (10424) Allowance of accounts of joint guardians.

Operation and Effect

Where one co-guardian filed a final account and the other co-guardian appeared at the hearing and produced his records and filed an affidavit stating that the material portions of the final account as filed by the other co-guardian were correct, the procedure followed was sufficient to authorize the court to accept and approve the documents as a joint final account. Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1036.

91-4909. (10425) Expenses and compensation of guardians.

Attorney's Fees

This section allows the guardian his reasonable expenses incurred in the execution of the trust and attorney's fees are of that character. Grauman v. Chambers, 122 M 31, 198 P 2d 629, 636.

De Facto Guardian

A de facto guardian is entitled to a just and reasonable compensation for his services to be fixed in the sound discretion of the court. Grauman v. Chambers, 122 M 31, 198 P 2d 629, 636.

91-4911. (10427) **Procedure to mortgage, lease or grant right of way.** To obtain an order to mortgage, lease such real estate, or grant a right of way, the proceedings to be taken and the effect thereof must be as follows:

1. The guardian, or any person interested in the estate of the ward, shall file a verified petition showing, in the case of an application to mortgage real property, the following matters: the particular purpose or purposes for which it is proposed to make the mortgage, which shall be either to pay the debts, costs and charges of maintenance, charges of administration, or to pay, reduce, extend, or renew some lien or mortgage already subsisting on said realty, or some part thereof, or for the purpose of benefitting or improving the real estate of the ward; a statement of such debts, charges, costs of administration, or liens or mortgages to be paid, reduced, extended, or renewed, or the purpose and advisability of improving the real estate, as the case may be; the advantage that may accrue to the state from raising money, the amount proposed to be raised, together with the general description of the property proposed to be mortgaged, and the names of the ward and next of kin, if any, so far as known to the petitioner. In the case of an application to lease or grant an easement for right of way, including an application to make an oil and gas lease, said petitioner shall show the advantage that may accrue to the estate from giving the lease an easement for right of way; a general description of the property proposed to be leased or the easement for right of way to be granted; the terms, rental and general conditions of the proposed lease or right of way to be granted; and the names of the ward and next of kin, so far as known to the petitioner.

2. Thereafter the same procedure shall be had in all respects as is provided by the laws of Montana relating to the mortgaging or leasing of the real estate of a decedent, and the following sections are hereby expressly made applicable to the mortgaging or leasing of a ward's property by a guardian: section 91-3101, sections 91-3103 to 91-3109, inclusive.

History: En. Sec. 1, Ch. 48, L. 1905; re-en. Sec. 7779, Rev. C. 1907; amd. Sec. 2, Ch. 59, L. 1921; re-en. Sec. 10427, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1947; amd. Sec. 1, Ch. 225, L. 1955.

Amendment

The 1955 amendment inserted all references to the granting of a right of way or easement therefor; authorized the making of oil and gas leases, and substituted the reference to 91-3103 to 91-3109, inclusive for 91-3103 to 91-3107 and 91-3109.

Noncompliance with Law

Although guardian did not comply with the procedure outlined in the leasing of the ward's land, he will not be penalized when there is no showing of any loss or detriment to the estate by reason of such noncompliance. Grauman v. Chambers, 122 M 31, 198 P 2d 629, 635.

CHAPTER 50—SALE OF PROPERTY BY GUARDIANS—INVESTMENT OF PROCEEDS

91-5013. (10440) **Proceedings to conform to certain provisions of code.**

References

Cited or applied in Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1037.

CHAPTER 52—GUARDIANSHIP—GENERAL AND MISCELLANEOUS PROVISIONS

91-5210. (10463) **Orders to be entered in minutes—provisions, etc.**

References

Cited in Guardianship of Reid, 128 M 197, 271 P 2d 1031, 1037.

TITLE 92—WORKMEN'S COMPENSATION ACT

Chapter 1. Industrial accident board—creation and powers, 92-104, 92-116.
7. Compensation for various injuries—amount—payment, 92-701 to 92-709, 92-709A, 92-715.
8. Miscellaneous regulations—powers of board—rehearings and appeals, 92-807, 92-814.1, 92-819, 92-823.
9. Compensation plan No. 1, 92-902.
10. Compensation plan No. 2, 92-1003, 92-1005.
11. Compensation plan No. 3, 92-1101, 92-1103 to 92-1105, 92-1110, 92-1112, 92-1114.

CHAPTER 1—INDUSTRIAL ACCIDENT BOARD—CREATION AND POWERS

Section 92-104. Industrial accident board—compensation—terms and salaries.
92-116. Expenses to be paid from what fund.

92-104. (2819) **Industrial accident board—compensation—terms and salaries.** There is hereby created a board to consist of three (3) members. The commissioner of labor and industry shall be one member, the commissioner of agriculture shall be one member, and one member shall be appointed by the governor, by and with the consent of the senate. The board shall be known as the Industrial Accident Board and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be four (4) years and until his successor shall have been appointed and confirmed. He shall receive an annual salary of seven thousand dollars ($7,000.00), payable monthly and shall be chairman of the board. The board shall elect one of their own number as treasurer of the board; provided, however, that the provisions of this act shall not be applicable to the chairman of the board until the expiration of term of the present chairman of said board.

History: En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921; re-en. Sec. 2819, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1953.

Amendment

The 1953 amendment completely rewrote this section. Prior to amendment it read: "There is hereby created a board to consist of three members; the commissioner of agriculture, labor, and industry shall be one member; the state auditor shall be one member, and one member shall be appointed by the governor, which board shall be known as the industrial accident board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of five thousand dollars, payable monthly, and shall be chairman of the board. The board shall elect one of their number as treasurer of the board."

Repealing Clause

Section 2 of Ch. 161, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 161, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

Appointment of Governor

Prior to the enactment of chapter 161, Laws of 1953 an appointment by the governor to the board was effective at once by the governor's act alone. By chapter 161 is added the condition that an appointment to the board by the governor is neither complete nor effective until the consent of the senate has been given. State v. Swanberg, — M —, 299 P 2d 446, 448.

An appointment made by the governor on May 1, 1955, which was during a time when the senate was not in session was not effective since it was not with the consent of the senate. The incumbent

would continue to hold the office. Section 7, article 7 of the Constitution, which authorizes the governor to make recess appointments when a vacancy occurs has reference only to such vacancies which leave the office without anyone to discharge the duties and does not apply to a case where the incumbent holds until his successor is elected or appointed and qualified and is discharging the duties of his office. State v. Swanberg, — M —, 299 P 2d 446, 448.

Construction

Chapter 161, Laws of 1953 did not create a new board nor a new office but preserved intact the old board which had functioned as such since 1915 but provided for a change only in the personnel of the board, and of the conditions laid down under which the governor might appoint to that board. State v. Swanberg, — M —, 299 P 2d 446, 452.

92-109. (2824) **Quorum—powers in case of vacancy—hearings, etc.**

References

Cited or applied in Gaffney v. Industrial Accident Board, — M —, 287 P 2d 256, 261.

92-116. (2831) **Expenses to be paid from what fund.** The industrial administration fund provided by section 92-837 shall consist of the following:

(1) All fees provided in section 92-119, Revised Codes of Montana, 1947;

(2) All assessments paid to the board by employers who elect to become bound by Plan No. 1 of this act;

(3) All assessments paid to the board by insurers who insure employers under Plan No. 2 of the act;

(4) All fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(5) All assessments levied against the industrial insurance fund as provided by this act.

Said fund shall be divided into two (2) accounts, to be known, respectively, as the general account and the industrial insurance fund account. The general account shall be credited with all of the assessments and fees described in items (1), (2), (3) and (4) above. The assessments described in item (5) above shall be allocated between and credited to, the general account and the industrial insurance fund account, respectively, in the manner and proportions hereinafter provided. The general account shall be debited with expenses incurred by the board in the general administration of the provisions of this act, including the salaries of its members, officers and employees, and the actual and necessary traveling expenses and disbursements of such members, officers and employees, incurred while on the business of the board either within or without the state, other than any such salaries, disbursements and expenses, or portions thereof, incurred in the operation or administration of the industrial insurance fund. The industrial insurance fund account shall be debited with all expenses, disbursements and salaries which are incurred in the administration or operation of the industrial insurance fund, including a portion of the salaries of the members of the board and its officers and employees, commensurate to the time spent by them on the business of such fund, and also the cost of inspections and examinations of places of employment covered under Plan No. 3. The funds in each of said accounts shall be used exclusively for the purposes herein described with respect to each such account, and any balance remaining in either of said

accounts shall not be transferred to the other. Disbursements from the industrial administration fund shall be made after being approved by the board upon claim therefor to be audited and approved by the state board of examiners.

At the beginning of each fiscal year the board shall levy against the industrial insurance fund an assessment in an amount not exceeding ten per cent (10%) of the gross annual direct premium income of the said industrial insurance fund for the previous fiscal year, less return premiums, and said assessment shall be paid forthwith by the treasurer into the industrial administration fund. The amount of said assessment shall be allocated and credited as follows, to-wit: Sixty-two per cent (62%) thereof to the said industrial insurance fund account, and the balance thereof to the said general account.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2831, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

CHAPTER 2—DEFENSES—ELECTION TO COME UNDER ACT

92-207. (2841) Employers engaged in hazardous industries—election.

References

Cited or applied in State v. Industrial Accident Board, — M —, 300 P 2d 954, 958.

92-208. (2842) Employee engaged in hazardous occupation, etc.

References

Cited or applied in State v. Industrial Accident Board, — M —, 300 P 2d 954, 959.

CHAPTER 3—HAZARDOUS OCCUPATIONS TO WHICH ACT APPLIES

92-301. (2847) Act applies to all inherently hazardous occupations, etc.

Accidents Occurring Outside of State

Where employer and employee are residents of Montana, and such relationship arose in Montana but the employee is injured while working outside of the state the Montana act would be applicable and the industrial accident board would have jurisdiction. State v. Industrial Accident Board, — M —, 300 P 2d 954. (Dissenting opinion, — M —, 300 P 2d 954, 963.)

When limitation period begins to run against claim under Workmen's Compensation or Occupational Diseases Act for contracting of disease. 11 ALR 2d 297.

CHAPTER 4—MEANING OF WORDS EMPLOYED IN ACT

92-410. (2862) Employer defined.

References

Cited or applied in State v. Industrial Accident Board, — M —, 300 P 2d 954, 957.

92-411. (2863) Employee and workman defined.

Accidents Occurring Outside of State

Where employer and employee are residents of Montana, and such relationship arose in Montana but the employee is injured while working outside of the state, the Montana act would be applicable and the industrial accident board would have jurisdiction. State v. Industrial Accident Board, — M —, 300 P 2d 954. (Dissenting opinion, — M —, 300 P 2d 954, 963.)

Employees who are resident citizens of the state, employed and paid in Montana through the only office of their employer, a Montana corporation, are entitled to the benefits of the Workmen's Compensation Laws of Montana although they were in-

jured in another state. State v. Industrial Accident Board, — M —, 300 P 2d 954. (Dissenting opinion, — M —, 300 P 2d 954, 963.)

Public officers as within statute. 5 ALR 2d 415.

92-413. (2865) Beneficiary defined.

References

Cited or applied in the dissenting opinion in Tabor v. Industrial Acc. Fund, 126 M 240, 247 P 2d 472, 474.

92-414. (2866) Major dependent defined.

"Dependent"

Dependency does not mean absolute dependency for the necessities of life, but rather that the applicant looked to and relied on the contributions of the workman, in whole or in part, as a means of support and maintenance, and a person may be a dependent although able to maintain himself without any aid from the contributor. Thus, where the decedent had agreed to contribute $40 per week to his parents, they were fully and reasonably justified in looking to and relying on these contributions as a means of support and constitutes them dependents within the statute. Tabor v. Industrial Acc. Fund, 126 M 240, 247 P 2d 472, 473.

92-415. (2867) Minor dependent defined.

References

Cited or applied in the dissenting opinion in Tabor v. Industrial Acc. Fund, 126 M 240, 247 P 2d 472, 474.

92-418. (2870) Injury or injured defined.

Disease Aggravated or Accelerated by Accident

The rule that the employer takes the employee as he finds him is well established. The fact that an employee was suffering from a pre-existing disease or disability does not preclude compensation if the disease or disability was aggravated or accelerated by an industrial injury which arose out of and in the course of the employment. Gaffney v. Industrial Accident Board, — M —, 287 P 2d 256, 259.

"Fortuitous" Defined

The word "fortuitous" means happening by chance or accident; coming or occurring unexpectedly or without known cause; and is synonymous with "industrial accident." Rathbun v. Taber Tank Lines, — M —, 283 P 2d 966, 969.

Heart Failure as an Industrial Accident

Heart failure brought about by unusual stress and strain in employment amounts to an industrial accident for which an award of compensation should be made. Rathbun v. Taber Tank Lines, — M —, 283 P 2d 966, 969.

References

Cited or applied in Peitz v. Industrial Accident Board, 127 M 316, 264 P 2d 709, 712.

CHAPTER 5—COMPENSATION TO CERTAIN HEIRS AND BENEFICIARIES

92-503. (2893) Compensation not paid to nonresident major or minor, etc.

Voluntary payment of compensation under statute of one state as bar to claim on ground of reduction of claim of compensation under statute of another state. 8 ALR 2d 628.

CHAPTER 6—CLAIMS—LIABILITY FOR INJURY UNDER DIFFERENT PLANS OF ACT

92-601. (2899) Claims must be presented within what time.

Equitable Estoppel

Where employee did not file his written claim for compensation within 12 months from the date of the happening of the accident because he was not examined thoroughly during that time, although he repeatedly asked that X-Rays be given, the doctrine of equitable estoppel should apply, and the employee should receive his compensation. McCoy v. Mike Horse Mining & Milling Co., 126 M 435, 252 P 2d 1036, 1039.

The doctrine of equitable estoppel is a flexible one, founded in equity and good

conscience; its object is to prevent a party from taking an unconscionable advantage of his own wrong while asserting his strict legal rights. Levo v. General-Shea-Morrison, — M —, 280 P 2d 1086, 1090.

Equitable estoppel may prevent a defendant from contending that a claim was not filed in time. Levo v. General-Shea-Morrison, — M —, 280 P 2d 1086.

Under the facts of the case the employee's failure to file his claim within the statutory time should not operate to bar his claim, since his failure was brought about by the direct intervention of the employer's agents. Levo v. General-Shea-Morrison, — M —, 280 P 2d 1086.

92-610. (2907) Contracts or agreements for hospital benefits, etc.

References

Cited in McCoy v. Mike Horse Mining & Milling Co., 126 M 435, 252 P 2d 1036, 1038.

92-614. (2911) Who liable for injuries under the different plans, etc.

Aggravation or Acceleration of Disease

The rule that the employer takes the employee as he finds him is well established. The fact that an employee was suffering from a pre-existing disease or disability does not preclude compensation if the disease or disability was aggravated or accelerated by an industrial injury which arose out of and in the course of the employment. Gaffney v. Industrial Accident Board, — M —, 287 P 2d 256, 259.

Decision of Board—Presumption

Where a decision of the board as to whether an accident arose out of or in the course of the employment involved the consideration of conflicting evidence as to essential facts or the deduction of permissible but diverse inferences therefrom, its solution of such conflict is presumed to be correct, and the burden of proof is upon the party attacking it to show they were erroneous. Partoll v. Anaconda Copper Min. Co., 122 M 305, 203 P 2d 974, 977.

Heart Failure

Heart failure may be classified as an industrial accident where it is brought about by unusual stress and strain in employment. Rathbun v. Taber Tank Lines, — M —, 283 P 2d 966, 969.

Injury Arising Out of and in the Course of Employment

If act resulting in injury is incidental to the employment, the fact that it was done during the lunch period does not prevent the award of compensation. Geary v. Anaconda Copper Min. Co., 120 M 485, 188 P 2d 185, 187.

Injuries sustained after the completion of the regular work by an employee subject to call may in a proper case be compensable as an injury arising out of and in the course of employment. Geary v. Anaconda Copper Min. Co., 120 M 485, 188 P 2d 185, 187.

Where employees of defendant were permitted to play handball in garage and had played such game daily during their lunch hour for a period of about three months, and employees were required to eat their lunches on the premises so as to be there if a call came, and only employees participated in the game, an injury caused when an employee, while jumping for the ball, accidentally struck another breaking his glasses, was sufficiently incidental to the employment to have arisen out of and in the course of his employment. Geary v. Anaconda Copper Min. Co., 120 M 485, 188 P 2d 185, 187.

No exact formula can be laid down which will automatically solve every case involving the question whether an accident arises out of and in the course of the employment, but each case must depend upon its particular facts and circumstances. Partoll v. Anaconda Copper Min. Co., 122 M 305, 203 P 2d 974, 977.

References

Cited or applied in State v. Industrial Accident Board, — M —, 300 P 2d 954, 958.

CHAPTER 7—COMPENSATION FOR VARIOUS INJURIES—AMOUNT —PAYMENT

Section 92-701. Compensation for injury producing temporary total disability.
92-702. Compensation for injury producing total disability permanent in character.
92-703. For partial disability.
92-704. Compensation for injury causing death.
92-705. Providing for payment of burial expense.

92-706. Medical and hospital services and such other treatment as approved by the board to be furnished.
92-707. Compensation from what date paid.
92-708. Compensation to run consecutively—major and minor dependents not residing in the United States—manner of payment.
92-709. Compensation in case of specified injuries.
92-709A. Permanent and total disability created by a second injury—second injury fund.
92-715. Monthly payments converted into a lump sum.

92-701. (2912) **Compensation for injury producing temporary total disability.** Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars ($28.00) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States, who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars ($30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-three and 50/100 dollars ($33.50) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 ($36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing in the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars ($42.50) per week, and subject in all cases to a minimum compensation of twenty-five and 50/100 dollars ($25.50) per week, and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding three hundred (300) weeks from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 100, L. 1919; re-en. Sec. 2912, R. C. M. 1921; amd. Sec. 10, Ch. 121, L. 1925; amd. Sec. 12, Ch. 177, L. 1929; amd. Sec. 1, Ch. 230, L. 1947; amd. Sec. 1, Ch. 7, L. 1949; amd. Sec. 1, Ch. 48, L. 1951; amd. Sec. 1, Ch. 38, L. 1953; amd. Sec. 1, Ch. 253, L. 1955; amd. Sec. 1, Ch. 234, L. 1957.

Amendments

The 1949 amendment raised the maximum compensation in each instance and the minimum compensation by $2.50.

The 1951 amendment raised the maximum compensation in each instance and the minimum compensation by $1.50.

The 1953 amendment raised the maximum compensation in each instance and the minimum compensation by $3.00.

The 1955 amendment raised the maximum compensation in each instance and the minimum compensation by $2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: $28.00 from $26.50, $30.50 from $28.50, $33.50 from $29.50, $36.50 from $30.50, $40.00 from $31.50, $42.50 from $32.50 and the minimum compensation, $25.50 from $19.50 and inserted the words "increases by birth, or" appearing before the last word of the first sentence.

Wisconsin Decision

An award for temporary total disability was not final as to compensation and left employee free to pursue his remedy in Wisconsin which could also allow for temporary total disability allowing a credit for payments made under Montana award. Spietz v. Industrial Commission, 251 Wis. 168, 28 N.W. 2d 354.

References

Cited or applied in Peitz v. Industrial Accident Board, 127 M 316, 264 P 2d 709, 712.

Pleading aggravation of a pre-existing physical condition in workmen's compensation cases. 32 ALR 2d 1459.

92-702. (2913) **Compensation for injury producing total disability permanent in character.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars ($28.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars ($30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters, residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-three and 50/100 dollars ($33.50) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 dollars ($36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and four (4) children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars ($42.50) per week; and subject in all cases to a minimum compensation of twenty-five and 50/100 dollars ($25.50) per week; and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of dis-

ability, but for the period not exceeding five hundred (500) weeks from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 5, Ch. 100, L. 1919; re-en. Sec. 2913, R. C. M. 1921; amd. Sec. 11, Ch. 121, L. 1925; amd. Sec. 13, Ch. 177, L. 1929; amd. Sec. 2, Ch. 230, L. 1947; amd. Sec. 2, Ch. 7, L. 1949; amd. Sec. 2, Ch. 48, L. 1951; amd. Sec. 2, Ch. 38, L. 1953; amd. Sec. 2, Ch. 253, L. 1955; amd. Sec. 2, Ch. 234, L. 1957.

Amendments

The 1949 amendment raised the maximum compensation in each instance and the minimum compensation by $2.50.

The 1951 amendment raised the maximum compensation in each instance and the minimum compensation by $1.50.

The 1953 amendment raised the maximum compensation in each instance and the minimum compensation by $3.00.

The 1955 amendment raised the maximum compensation in each instance and the minimum compensation by $2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: $28.00 from $26.50, $30.50 from $28.50, $33.50 from $29.50, $36.50 from $30.50, $40.00 from $31.50, $42.50 from $32.50 and the minimum compensation, $25.50 from $19.50 and inserted the words "increases by birth, or" appearing before the last word of the first sentence.

References

Cited or applied in Peitz v. Industrial Accident Board, 127 M 316, 264 P 2d 709, 712; Spieth v. Stuart, — M —, 299 P 2d 106, 108.

92-703. (2914) **For partial disability.** Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of twenty-eight dollars ($28.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty and 50/100 dollars ($30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-three and 50/100 dollars ($33.50) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-six and 50/100 dollars ($36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and four (4) or more

children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two thirds per centum (66 2/3%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty-two and 50/100 dollars ($42.50) per week; not exceeding however, the maximum compensation allowed in cases of total disability, and not exceeding in amount or duration the total compensation provided in this act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of permanent partial disability, and fifty (50) weeks in cases of temporary partial disability, subject to change when the number of dependents increases by birth, or decreases, provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of such member.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 6, Ch. 100, L. 1919; re-en. Sec. 2914, R. C. M. 1921; amd. Sec. 2, Ch. 177, L. 1929; amd. Sec. 3, Ch. 230, L. 1947; amd. Sec. 3, Ch. 7, L. 1949; amd. Sec. 3, Ch. 48, L. 1951; amd. Sec. 3, Ch. 38, L. 1953; amd. Sec. 3, Ch. 253, L. 1955; amd. Sec. 3, Ch. 234, L. 1957.

Amendments

The 1949 amendment raised the maximum compensation in each instance by $2.50.

The 1951 amendment raised the maximum compensation in each instance by $1.50.

The 1953 amendment raised the maximum compensation in each instance by $3.00.

The 1955 amendment raised the maximum compensation in each instance by $2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: $28.00 from $26.50, $30.50 from $28.50, $33.50 from $29.50, $36.50 from $30.50, $40.00 from $31.50, $42.50 from $32.50; inserted the words "in amount or duration" after the words "and not exceeding" near the end of the first sentence and in the second sentence inserted the words "increases by birth, or" and added the proviso clause.

Construction

The clause in this section "not exceeding however, the maximum compensation allowed in cases of total disability, and not exceeding the total compensation provided in this act for the total loss of the member causing such partial disability" has reference only to the total weekly compensation. It has nothing to do with the length of time the award must be paid. Spieth v. Stuart, — M —, 299 P 2d 106, 108, overruling anything in conflict therewith found in Novak v. Industrial Accident Board, 73 M 196, 235 P 756.

Under this section a claimant must show loss of earnings, while under section 92-709 he is entitled to an arbitrary sum—a percentage of his salary—as compensation for the loss of the member regardless of loss of earning or earning capacity. Construing this section and section 92-709 most favorably to the workman, he may take his choice by proceeding under this section and prove loss of earnings, or he may proceed under section 92-709 and obtain the arbitrary amount. Spieth v. Stuart, — M —, 299 P 2d 106, 108, overruling anything in conflict therewith found in Novak v. Industrial Accident Board, 73 M 196, 235 P 756.

References

Cited or applied in Shaffer v. Midland Empire Packing Co., 127 M 211, 259 P 2d 340, 341.

92-704. (2915) **Compensation for injury causing death.** For beneficiaries residing within the United States: Where decedent leaves one (1) beneficiary, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars ($28.00) per week; where decedent leaves two (2) beneficiaries, fifty-five

per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars ($30.50) per week; where decedent leaves three (3) beneficiaries, sixty per centum (60%) of the wages received at the time of the injury subject to a maximum compensation of thirty-three and 50/100 dollars ($33.50) per week; where decedent leaves four (4) beneficiaries, sixty-two and one-half per centum (62½%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 dollars ($36.50) per week; where decedent leaves five (5) beneficiaries, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where decedent leaves six (6) or more beneficiaries, sixty-six and two-thirds per centum (66 2/3%) of the wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars ($42.50) per week; and subject in all such cases to a minimum compensation of twenty-five and 50/100 dollars ($25.50) per week.

For beneficiaries residing outside of the United States: Where decedent leaves one (1) beneficiary, forty per centum (40%) of the compensation which would be payable to such beneficiary, if residing within the United States; where decedent leaves two (2) beneficiaries, forty-five per centum (45%) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves three (3) beneficiaries, forty-seven and one-half per centum (47½%) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves four (4) or more beneficiaries, fifty per centum (50%) of the compensation which would be payable to such beneficiaries, if residing within the United States.

If decedent leaves no beneficiaries, then compensation shall be payable as follows: To his major dependents, if any, residing in the United States at the date of the happening of the injury; where decedent leaves one (1) major dependent, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars ($28.00) per week; where decedent leaves two (2) major dependents, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars ($30.50) per week.

If the decedent leaves no major dependents, compensation shall be payable to his minor dependents, if any, if residing within the United States at the time of the happening of the injury, as follows: Where decedent leaves one (1) minor dependent, thirty per centum (30%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars ($28.00); where decedent leaves two (2) minor dependents, thirty-five per centum (35%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars ($30.50); where decedent leaves three (3) or more minor dependents, forty per centum (40%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-six and 50/100 dollars ($36.50) per week.

If the decedent leaves no major or minor dependents a lump sum in the

amount of three thousand and no/100 dollars ($3,000.00) shall be payable to his surviving parent or parents.

All such payments of compensation provided for in this section shall be subject to a maximum compensation of forty-two and 50/100 dollars ($42.50) per week for a period not exceeding five hundred (500) weeks and subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and provided, further, that compensation payable to major or minor dependents shall not exceed the amount of the dependency.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 7, Ch. 100, L. 1919; re-en. Sec. 2915, R. C. M. 1921; amd. Sec. 12, Ch. 121, L. 1925; amd. Sec. 14, Ch. 177, L. 1929; amd. Sec. 4, Ch. 230, L. 1947; amd. Sec. 4, Ch. 7, L. 1949; amd. Sec. 4, Ch. 48, L. 1951; amd. Sec. 4, Ch. 38, L. 1953; amd. Sec. 4, Ch. 253, L. 1955; amd. Sec. 4, Ch. 234, L. 1957.

Compiler's Notes

Section 5 of Ch. 7, L. 1949 is compiled as section 92-707.

Section 5 of Ch. 48, L. 1951 is compiled as section 92-709.

Section 5 of Ch. 38, L. 1953 is compiled as section 92-709.

Section 5 of Ch. 253, L. 1955 is compiled as section 92-706.

Amendments

The 1949 amendment raised the maximum compensation in each instance and the minimum compensation by $2.50 and raised the maximum period provided in the last paragraph from 400 to 500 weeks.

The 1951 amendment raised the maximum compensation in each instance and the minimum compensation by $1.50.

The 1953 amendment raised the maximum compensation in each instance and the minimum compensation by $3.00 and inserted the words "of the" appearing in the third paragraph after the words "United States at the date."

The 1955 amendment raised the maximum compensation in each instance and the minimum compensation by $2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: $28.00 from $26.50, $30.50 from $28.50, $33.50 from $29.50, $36.50 from $30.50, $40.00 from $31.50, $42.50 from $32.50 and the minimum compensation, $25.50 from $19.50; in the fourth paragraph inserted the words "subject to a maximum compensation of twenty-eight dollars ($28.00)," "subject to a maximum compensation of thirty and 50/100 dollars ($30.50)" and "subject to a maximum compensation of thirty-six and 50/100 dollars ($36.50) per week" each appearing respectively after the word "injury"; added the fifth paragraph and in the sixth paragraph inserted the words "increases by birth, or."

92-705. (2916) **Providing for payment of burial expense.** There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding five hundred dollars ($500.00) and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R. C. M. 1921; amd. Sec. 13, Ch. 121, L. 1925; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957.

Amendments

The 1953 amendment raised the maximum amount payable for funeral expenses from $250.00 to $350.00.

The 1957 amendment raised the maximum amount payable for funeral expenses from $350.00 to $500.00.

92-706. (2917) **Medical and hospital services and such other treatment as approved by the board to be furnished.** In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

During the first thirty-six (36) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board, not exceeding in amount the sum of twenty-five hundred dollars ($2500.00) provided however, that in cases of total disability where apportionment of such sum does not meet all hospitalization expenses, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper. The employer or insurer or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under hospital contract as provided in section 92-610 (2907) of this act.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of an injured employee in a particular case such injured employee may, anytime, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

And be it further provided, that where an injury arising out of and received in the course of employment necessarily results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the industrial accident board may, in its discretion, order that an artificial member be furnished to supply the loss of any such member or members so lost. Such artificial member shall be furnished at the expense of the employer, operating under plan one, or the insurer, operating under plan two, or the industrial accident fund where the employer is operating under plan three. The replacement of an artificial member so furnished shall be required every five (5) years, if necessary, unless the board shall determine a replacement is needed within a shorter period.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 3, Ch. 196, L. 1921; re-en. Sec. 2917, R. C. M. 1921; amd. Sec. 14, Ch. 121, L. 1925; amd. Sec. 15, Ch. 177, L. 1929; amd. Sec. 2, Ch. 139, L. 1931; amd. Sec. 1, Ch. 229, L. 1943; amd. Sec. 2, Ch. 213, L. 1945; amd. Sec. 1, Ch. 41, L. 1949; amd. Sec. 7, Ch. 38, L. 1953; amd. Sec. 5, Ch. 253, L. 1955; amd. Sec. 6, Ch. 234, L. 1957.

Compiler's Note

Section 8 of Ch. 38, L. 1953 is compiled as section 92-823.

Amendments

The 1949 amendment raised the maximum amount allowed for treatment from $500 to $1,000 and substituted the words "be required every five (5) years, if necessary" at the end of the section for "not be required unless made necessary by a subsequent industrial accident arising out of and suffered in the course of employment."

The 1953 amendment increased from 9 to 12 months the period for which hospital and medical services be rendered and increased the maximum sum for such services from $1,000 to $1,500; substituted the word "and" for "or" appearing between the words "hospital" and "medical facilities" in the third paragraph; increased the maximum amount payable for artificial members as follows: "Hand or arm to elbow" from $150.00 to $250.00, "Arm above elbow" from $175.00 to $300.00, "Foot or leg" from $150.00 to $250.00, "Eye" from $10.00 to $25.00 and "teeth" from $125.00 to $175.00.

The 1955 amendment increased from 12 to 18 months the period for which hospital and medical services be rendered; raised the maximum sum for such services from $1500 to $2500 and added the proviso allowing for additional hospital expenses of $1,000 in cases of total disability.

The 1957 amendment in the second paragraph increased from 18 to 36 months the period for which hospital and medical

services be rendered and in the proviso substituted "an additional amount for such additional hospital and medical expenses as in special cases it may deem proper" for "an additional amount up to one thousand dollars ($1,000.00) for such additional hospital expenses"; in the fourth paragraph deleted former provisions concerning maximum amount payable for artificial members which read "The expense of furnishing any such member shall not exceed the following amounts: Hand or arm to elbow—two hundred fifty dollars ($250.00). Arm above elbow—three hundred dollars ($300.00). Foot or leg—two hundred fifty dollars ($250.00). Eye—twenty-five dollars ($25.00). Teeth—one hundred seventy-five dollars ($175.00)" and in the last sentence inserted the words "unless the board shall determine a replacement is needed within a shorter period."

Repealing Clause

Section 2 of Ch. 41, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 41, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 21, 1949.

References

Cited in McCoy v. Mike Horse Mining & Milling Co., 126 M 435, 252 P 2d 1036, 1038.

92-707. (2918) **Compensation from what date paid.** When an injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, no compensation shall be allowed or paid during the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues six [6] weeks, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, but if disability continues three [3] weeks, compensation shall be paid from the date of injury; provided, that separate benefits of medical and hospital services shall be furnished from date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R. C. M. 1921; amd. Sec. 3, Ch. 177, L. 1929; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949.

Amendment

The 1949 amendment substituted the words "first week" in the first sentence for "first two weeks."

92-708. (2919) **Compensation to run consecutively—major and minor dependents not residing in the United States—manner of payment.** Compensation shall run consecutively and not concurrently and payment shall not be made for two (2) classes of disability over the same period, provided that the total period over which compensation shall be payable for two or more classes of disability, including death, resulting from any compensable injury, shall not extend for a period of more than five hundred (500) weeks, and provided that no compensation shall be paid to a major or minor dependent who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving widow and stepchildren of such widow the compensation shall be divided equally among all beneficiaries. Compensation due to major dependents where there be more than one, shall be divided equitably among them and likewise as to minor dependents, and the question

of dependency and amount thereof shall be a question of fact for determination by the board.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R. C. M. 1921; amd. Sec. 15, Ch. 121, L. 1925; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955.

Amendment

The 1955 amendment inserted the first proviso in this section.

Repealing Clause

Section 8 of Ch. 253, Laws 1955 repealed all acts and parts of acts in conflict therewith.

92-709. (2920) **Compensation in case of specified injuries.** In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, shall be as follows: Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-eight dollars ($28.00) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of thirty and 50/100 dollars ($30.50) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-three and 50/100 dollars ($33.50) per week; where the injured employee has a wife and two (2) children or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the wages received at the time of injury, subject to a maximum compensation of thirty-six and 50/100 dollars ($36.50) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3%) of the wages received at the time of the injury, subject to a maximum compensation of forty-two and 50/100 dollars ($42.50) per week, subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and subject in all cases to a minimum compensation of twenty-five and 50/100 dollars ($25.50) per week, and shall be paid for the following periods:

For loss of:

One arm at or near shoulder	280 weeks
One arm at the elbow	240 weeks
One arm between wrist and elbow	220 weeks

One hand	200 weeks
One thumb and the metacarpal bone thereof	75 weeks
One thumb at the proximal joint	37 weeks
One thumb at the second distal joint	25 weeks
One first finger and the metacarpal bone thereof	40 weeks
One first finger at the proximal joint	30 weeks
One first finger at the second joint	22 weeks
One first finger at the distal joint	15 weeks
One second finger and the metacarpal bone thereof	37 weeks
One second finger at the proximal joint	20 weeks
One second finger at the second joint	15 weeks
One second finger at the distal joint	8 weeks
One third finger and the metacarpal bone thereof	25 weeks
One third finger at the proximal joint	15 weeks
One third finger at the second joint	10 weeks
One third finger at the distal joint	5 weeks
One fourth finger and the metacarpal bone thereof	15 weeks
One fourth finger at the proximal joint	11 weeks
One fourth finger at the second joint	8 weeks
One fourth finger at the distal joint	6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
One leg between knee and ankle	190 weeks
One foot at the ankle	180 weeks
One great toe with the metatarsal bone thereof	37 weeks
One great toe at the proximal joint	18 weeks
One great toe at the second joint	12 weeks
One toe other than the great toe with the metatarsal bone thereof	16 weeks
One toe other than the great toe at the proximal joint	8 weeks
One toe other than the great toe at second or distal joint	5 weeks
One eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Partial loss or partial loss of use: Indemnity benefits for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

In any case in which there shall be a loss, or loss of use, of more than one member as set forth in this section, not amounting to permanent total disability, the award of indemnity benefits shall be for the loss, or loss of use thereof, which awards shall run consecutively, provided, however,

that the total award or compensation in no case shall exceed five hundred (500) weeks.

Disfigurement: The board may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars ($2,500.00) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957.

Amendments

The 1949 amendment raised the maximum amount of compensation in each instance and the minimum compensation by $2.50 and also increased the number of weeks for each of the specified injuries.

The 1951 amendment raised the maximum amount of compensation in each instance and the mimimum compensation by $1.50.

The 1953 amendment raised the maximum amount of compensation in each instance and the minimum compensation by $3.00.

The 1955 amendment increased the maximum amount of compensation in each instance and the minimum compensation by $2.00.

The 1957 amendment raised the maximum compensation in each instance as follows: $28.00 from $26.50, $30.50 from $28.50, $33.50 from $29.50, $36.50 from $30.50, $40.00 from $31.50, $42.50 from $32.50 and the minimum compensation, $25.50 from $19.50; inserted the words "increases by birth, or"; increased the number of weeks in each of the following specified injuries: One arm at or near shoulder, 280 from 250 weeks, one arm at the elbow, 240 from 225 weeks, one arm between wrist and elbow, 220 from 200 weeks, one hand, 200 from 187 weeks, one first finger and the metacarpal bone thereof, 40 from 37 weeks, one first finger at the proximal joint, 30 from 25 weeks, one first finger at the second joint, 22 from 18 weeks, one first finger at the distal joint, 15 from 12 weeks, one second finger at the proximal joint, 20 from 18 weeks, one second finger at the second joint, 15 from 12 weeks, one second finger at the distal joint, 8 from 6 weeks, one fourth finger at the second joint, 8 from 7 weeks, one fourth finger at the distal joint, 6 from 4 weeks, one leg at or near the hip joint as to preclude the use of an artificial limb, 300 from 250 weeks, one leg at or above the knee where stump remains sufficient to permit the use of an artificial limb, 200 from 187 weeks, one leg between knee and ankle, 190 from 175 weeks, one foot at the ankle, 180 from 156 weeks, one toe other than the great toe with the metatarsal bone thereof, 16 from 15 weeks, one toe other than the great toe at the proximal joint, 8 from 7 weeks, one toe other than the great toe at second or distal joint, 5 from 4 weeks, one eye by enucleation, 165 from 150 weeks, total blindness of one eye, 140 from 125 weeks, total loss of hearing, one ear, 40 from 25 weeks, total loss of hearing, both ears, 200 from 150 weeks, and added paragraphs two through six.

Repealing Clauses

Section 7 of Ch. 7, L. 1949 and Sec. 6 of Ch. 48, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 7, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 3, 1949.

Construction

Under this section a claimant is entitled to an arbitrary sum—a percentage of his

salary—as compensation for the loss of the member regardless of loss of earning or earning capacity, while under section 92-703 a claimant must show loss of earnings. Construing this section and section 92-703 most favorable to the workman, he may take his choice by proceeding under section 92-703 and prove loss of earnings, or he may proceed under this section and receive an arbitrary amount. Spieth v. Stuart, — M —, 299 P 2d 106, 108, overruling anything in conflict therewith found in Novak v. Industrial Accident Board, 73 M 196, 235 P 756.

Operation and Effect

Where there was proof of a limitation of muscular movement to the extent of forty or fifty per cent, but no proof of the inability to obtain employment or how or in what manner the claimant's ability to earn had been in anywise reduced because of the injuries, the trial court was correct in denying the claimant compensation since the loss of earning power as the result of an injury is not necessarily proportional to the bodily functional disability. Shaffer v. Midland Empire Packing Co., 127 M 211, 259 P 2d 340, 342.

The test is not whether there has been a loss of earnings or income caused by the injury, but rather has there been a loss of earning capacity—a loss of ability to earn in the open labor market. Shaffer v. Midland Empire Packing Co., 127 M 211, 259 P 2d 340, 342.

92-709A. Permanent and total disability created by a second injury—second injury fund. (1) If an employee who has previously lost, or lost the use of, one [1] hand, one [1] arm, one [1] foot, one [1] leg, or one [1] eye, from any cause or origin and irrespective of compensability becomes permanently and totally disabled through the loss, or loss of use, of another such member or organ, the employer, insurance carrier, or industrial accident fund, as the case may be, shall be liable only for the compensation payable for such second loss; provided, that in addition to such compensation and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total disability, out of a special fund known as the "Second-Injury Fund," and created for such purpose in the following manner:

In every case of the death of an employee under this act, where there is no person entitled to compensation, the employer if under Plan I, or his insurance carrier if under Plan II, or the industrial accident fund if under Plan III, shall pay to the second injury fund of the industrial accident board the sum of five hundred and no/100 ($500.00) dollars to be deposited for the benefit of said fund, and the board shall direct the distribution thereof.

When in the judgment of the industrial accident board, the amount of money in the second injury fund is such that there is a surplus above and beyond known liabilities, the board may in its discretion suspend or decrease further collection of assessments for a period of time to be determined by the board but in no event to exceed one [1] calendar year.

(2) There is hereby appropriated from moneys in the industrial accident fund the sum of twenty thousand and no/100 ($20,000.00) dollars to immediately create said second injury fund and to pay the compensation provided for in this act. When in the judgment of the industrial accident board, the contributions to the second injury fund so warrant, the board shall direct the reimbursement of the industrial accident fund out of said second injury fund. In addition to the reimbursement hereinabove directed to be made, the board shall cause to be paid to the industrial accident fund from said second injury fund, when contributions thereto so warrant, interest at the rate of 3% per annum upon said sum

of twenty thousand dollars ($20,000.00) hereinabove appropriated or upon such portion thereof as may from time to time remain in said second injury fund.

History: Sec. 92-709A, R. C. M. 1947, as added Sec. 1, Ch. 190, L. 1951.

Title of Act

An act to amend that portion of the Workmen's Compensation Act contained in chapter 7 of Volume 6 of the Revised Codes of Montana of 1947 by adding thereto a new section to be known as section 92-709A; encouraging the employment of disabled veterans and other disabled persons; providing for payment of workmen's compensation for a second injury; creating a second injury fund in the industrial accident board through payments from employers, insurers, and the industrial accident fund; appropriating twenty thousand and no/100 ($20,000.00) dollars from the industrial accident fund for the purposes of this act and providing for the repayment thereof.

Effective Date

Section 2 of Ch. 190, L. 1951 provided the act should be in force from and after its passage and approval. Approved March 5, 1951.

Pleading aggravation of a preexisting physical condition in workmen's compensation cases. 32 ALR 2d 1459.

92-712. (2923) **Adjustment of compensation in case of further injuries.**

Construction

The fact that a man has once received compensation, as for example where he has previously received 250 weeks or half the statutory amount does not mean that forever after he is in the eyes of the compensation laws but half a man, so that he can never again receive a compensation award going beyond the other fifty per cent of total. After having received his prior payments, he may, in future years, be physically able to and does resume full gainful employment for several years, and if he does, there is no reason or logic why a disability from an unscheduled industrial accidental injury, which would bring anyone else total permanent disability benefits, should yield him only half as much. Peitz v. Industrial Accident Board, 127 M 316, 264 P 2d 709, 712.

The limitation affixed to unscheduled injuries applies only to the particular injury which results from a particular accident. Any other interpretation would be discriminatory as between a person having a prior industrial accidental injury and another person who had the same kind of an injury outside of industry; when both thereafter had an unscheduled industrial accidental injury, the former would have his prior payments deducted while the latter would receive full payment. Peitz v. Industrial Accident Board, 127 M 316, 264 P 2d 709, 712.

Worker, who suffered a prior industrial accident several years before to a different segment of his body and drew compensation for several months for that injury but at the time of his present injury he was not receiving compensation for the prior injury nor were the prior payments commuted or paid in a lump sum, would not have that compensation deducted from the claim under the present injury. Peitz v. Industrial Accident Board, 127 M 316, 264 P 2d 709.

92-715. (2926) **Monthly payments converted into a lump sum.** The monthly payments provided for in this act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of two per centum (2%) per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump sum payment and the advisability of such conversion. The board is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act shall be absolutely null and void without the approval of the board. Any approval

of the board must be in writing and set forth specifically the reasons for such lump sum or compromise payment.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R. C. M. 1921; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957.

Amendments

The 1951 amendment reduced the rate of capitalization provided for in the first sentence from 5% to 2%.

The 1957 amendment added the last sentence.

Repealing Clause

Section 2 of Ch. 225, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 225, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 5, 1951.

Operation and Effect

Where the evidence before the district court was ample to sustain that court's judgment that the claimant should be awarded total disability rating and that a lump sum award and payment be made to him, such judgment will be affirmed. Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 970.

The legislature evidently intended in the enactment of the Workmen's Compensation Act that the monthly payments should be the rule and lump sum settlements the exception. The various purposes of the method of periodical payments, is as far as possible, to preclude the possibility of an improvident claimant or dependent wasting the means of support and thereby becoming a burden upon the public; and also that the result of the industrial accident may be better appraised during the periodic payments. Moffett v. Industrial Accident Board, — M —, 301 P 2d 340.

CHAPTER 8—MISCELLANEOUS REGULATIONS—POWERS OF BOARD—REHEARINGS AND APPEALS

Section 92-807. Notice of claims for injuries other than death.
92-814.1. Requiring claimant to submit to examination—report of physician—cost.
92-819. Apportionment of costs and disbursements—expenses.
92-823. Time for filing—final findings and awards.

92-807. (2933) **Notice of claims for injuries other than death.** No claims to recover compensation under this act for injuries not resulting in death shall be maintained unless, within sixty (60) days after the occurence of the accident which is claimed to have caused the injury, notice in writing stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer, except as otherwise provided in section 92-602; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be equivalent to such service.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R. C. M. 1921; amd. Sec. 7, Ch. 177, L. 1929; amd. Sec. 9, Ch. 234, L. 1957.

Amendment

The 1957 amendment substituted "sixty (60) days" for "thirty (30) days."

92-808. (2934) **Employers and insurers required to file reports, etc.**

References

Cited or applied in Levo v. General-Shea-Morrison, — M —, 280 P 2d 1086, 1088.

92-814.1. Requiring claimant to submit to examination — report of physician—cost. In the event of a dispute concerning the physical condi-

tion of a claimant, or the cause or causes of his injury or disability, if any, the board, at the request of the claimant, employer or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or physicians within the state of Montana or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician making such examination shall file a written report of his findings with the board for its use in the determination of the controversy involved. The board shall pay the physician for such examination and shall be reimbursed by the party who requested it.

History: En. Sec. 10, Ch. 234, L. 1957.

Repealing Clause

Section 11 of Ch. 234, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 12 of Ch. 234, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

92-819. (2945) **Apportionment of costs and disbursements—expenses.** The costs and disbursements incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2945, R. C. M. 1921; amd. Sec. 3, Ch. 139, L. 1931; amd. Sec. 2, Ch. 162, L. 1937; amd. Sec. 1, Ch. 184, L. 1947; amd. Sec. 2, Ch. 176, L. 1957.

Amendment

The 1957 amendment deleted from this section a second sentence, for text of which see parent volume.

92-821. (2947) **Jurisdiction of board to hear disputes and controversies.**

Attack on Decision—Burden of Proof

Where the decisions of the board and court involve the consideration of conflicting evidence as to essential facts or the deduction of permissible but diverse inferences therefrom, their solutions of such conflict are presumed to be correct, and the burden of proof is upon the party attacking them to show that they were erroneous. Partoll v. Anaconda Copper Min. Co., 122 M 305, 203 P 2d 974, 977.

92-823. (2949) **Time for filing—final findings and awards.** The board shall hold the initial hearing to determine any dispute or controversy arising under this act within ninety (90) days from the date on which such disputed claim was filed with the board. After a final hearing by the board, it shall within thirty (30) days, make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2949, R. C. M. 1921; amd. Sec. 8, Ch. 38, L. 1953.

Amendment

The 1953 amendment added the first sentence of this section and inserted the number (30).

Repealing Clause

Section 9 of Ch. 38, Laws 1953 repealed all acts and parts of acts in conflict therewith.

92-826. (2952) **Jurisdiction to rescind or amend any order, etc.**

Lump Sum Settlement

Where employee, in 1938, entered into a full and final compromise settlement calling for a lump sum payment and which was approved by the board, such order of the board could not be reopened in later years. Moffett v. Industrial Accident Board, — M —, 301 P 2d 340.

92-829. (2955) Application for rehearing.

References

Cited or applied in State ex rel. Albrecht v. District Court, 126 M 178, 246 P 2d 1035, 1036; Spieth v. Stuart, — M —, 299 P 2d 106, 110.

92-831. (2957) Application for rehearing—contents—rules of procedure.

References

Cited or applied in Spieth v. Stuart, — M —, 299 P 2d 106, 110.

92-833. (2959) Appeal to district court.

Appeal Time Provisions Mandatory and Jurisdictional

The appeal time provisions of this section are mandatory and jurisdictional; thus, where an application for a rehearing was denied, and appeal to the district court was not made until 36 days after the application for rehearing was denied and 28 days after notice of such order and decision of the board was received, the district court was without jurisdiction to entertain the appeal. State ex rel. Albrecht v. District Court, 126 M 178, 246 P 2d 1035, 1036, 1037.

Appeal to Supreme Court

Where the evidence before the district court was ample to sustain that court's judgment, such judgment will be affirmed. Although full credit and effect are given to the findings made by the board the court will uphold the judgment of the district court, if the conclusions of law reached by the board are not correct. Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 970.

Operation and Effect

Where claimant appealed from the decision of the industrial accident board and then dismissed such appeal without prejudice in order to present a motion for a rehearing as contemplated by this section, there was no waiver of his right of appeal. Spieth v. Stuart, — M —, 299 P 2d 106, 110.

92-834. (2960) How appeal taken—notice—record—trial.

References

Cited or applied in State ex rel. Albrecht v. District Court, 126 M 178, 246 P 2d 1035, 1036; Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 969.

92-835. (2961) Appearances—setting aside conclusions, orders, etc.

References

Cited or applied in Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 970.

92-836. (2962) Appeals to supreme court.

Extent of Review

On appeal to the Supreme Court where the evidence is conflicting the resolution of such conflicts is for the trier of the facts and where there is evidence to sustain its determination it will not be disturbed on appeal. Weakley v. Cook, 126 M 332, 249 P 2d 926.

92-838. (2964) Court to give liberal construction to act.

Accidents Occurring Outside of State

Employees who are resident citizens of the state, employed and paid in Montana through the only office of their employer, a Montana corporation, are entitled to the benefits of the Workmen's Compensation Laws of Montana although they were injured in another state. State v. Industrial Accident Board, — M —, 300 P 2d 954. (Dissenting opinion, — M —, 300 P 2d 954, 963.)

Operation and Effect

The court cannot under the guise of liberal interpretation, disregard plain provisions of the statute, but when it is open to more than one interpretation, one favorable to the employee and the other against him, the court must give it the construction most favorable to the injured workman. Geary v. Anaconda Copper Min. Co., 120 M 485, 188 P 2d 185, 186.

References

Cited in Peitz v. Industrial Accident Board, 127 M 316, 264 P 2d 709, 712; Spieth v. Stuart, — M —, 299 P 2d 106, 107.

CHAPTER 9—COMPENSATION PLAN NO. 1

Section 92-902. Proof of solvency of employer electing plan No. 1 to be filed.

92-902. (2971) **Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

The board shall levy an assessment in the amount of not to exceed two hundredths of one per cent of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the board by said employer at the time of filing of proof of solvency.

No assessment shall be in an amount less than ten dollars ($10.00).

If such employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

The treasurer of the board shall pay the amounts so collected into the industrial administration fund.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931; amd. Sec. 3, Ch. 176, L. 1957.

Amendment

The 1957 amendment inserted the word "in" before the words "such form" in the first paragraph and substituted the second, third, fourth and fifth paragraphs for a former last sentence of the first paragraph which read "The industrial accident board shall require a fee of five dollars ($5.00) to be paid into the industrial fund for the filing of every such proof of solvency."

CHAPTER 10—COMPENSATION PLAN NO. 2

Section 92-1003. Policies to contain what.
92-1005. Policies made subject to this act.

92-1001. (2978) **Employer electing plan No. 2 to insure his liability.**

References

Cited or applied in Shaffer v. Midland Empire Packing Co., 127 M 211, 259 P 2d 340, 341.

Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 ALR 2d 407.

92-1003. (2980) **Policies to contain what.** All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R. C. M. 1921; amd. Sec. 6, Ch. 139, L. 1931; amd. Sec. 4, Ch. 176, L. 1957.

Amendment

The 1957 amendment deleted from the end of this section a sentence which read "When any such policy, or a renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars ($3.00), which fee is to be credited to the industrial administrative fund."

92-1005. (2982) **Policies made subject to this act.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms shall have been approved by the board, and as otherwise provided by law.

On or before the first day of July of each year, the board shall assess and each insurer shall pay to the board not to exceed one and three-fourths per cent of its gross annual direct premiums collected in Montana on policies of insurance insuring employers who elected to become bound by the compensation plan No. 2 during the previous calendar year, less return premiums. No such assessment shall be less than ten dollars ($10.00). The treasurer of the board shall pay the amounts so collected into the industrial administration fund. Payments by such insurers under this section shall be considered as items of loss for rate-making purposes.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R. C. M. 1921; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957.

Amendments

The 1951 amendment added the second paragraph.

The 1957 amendment substituted the second paragraph above for the one added by the 1951 amendment which read "No insurer shall enter into any such policy of insurance unless said insurer agrees to devote one percentum (1%) of its gross annual premiums collected in Montana on policies of workmen's compensation insurance to accident prevention work among its assureds. Such accident prevention work shall be carried on in cooperation with the bureau of safety of the industrial accident board."

Repealing Clauses

Section 6 of Ch. 176, Laws 1957 read "That section 92-1211 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 7 of Ch. 176, Laws 1957 read "That section 92-1212 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 8 of Ch. 176, Laws 1957 read "That section 92-1213 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 2 of Ch. 217, Laws 1951 and Sec. 9 of Ch. 176, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 11—COMPENSATION PLAN NO. 3

Section 92-1101. What necessary in electing plan No. 3—percentage of payroll to be paid in under plan.
92-1103. Contract or policy of insurance—payment of premium.
92-1104. Classifications by board.
92-1105. Intent and purpose of plan No. 3.
92-1110. Surplus in industrial insurance fund.
92-1112. Investment of reserve—payment of installments.
92-1114. Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.

92-1101. (2990) **What necessary in electing plan No. 3—percentage of payroll to be paid in under plan.**

COMPENSATION PLAN NUMBER THREE

Every employer subject to the provisions of compensation plan No. 3 shall, in the manner herein specified pay into the industrial insurance fund a premium based on a percentage of his payroll as determined by the industrial accident board in accordance with the provisions of this act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

References

Cited or applied in Taber v. Industrial Acc. Fund, 126 M 240, 247 P 2d 472; Kustudia v. Industrial Accident Board, 127 M 115, 258 P 2d 965, 966; State v. Industrial Accident Board, — M —, 300 P 2d 954, 958.

92-1103. (2991) **Contract or policy of insurance—payment of premium.** Every employer electing to be bound by compensation plan No. 3 shall receive from the industrial accident board a contract or policy of insurance in a form approved by the board. The premium thereon shall be paid by the employer, to the industrial accident board at such times as the board shall prescribe and shall be paid over by the board to the state treasurer to the credit of the industrial insurance fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R. C. M. 1921; amd. Sec. 2, Ch. 123, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

92-1104. (2992) **Classifications by board.** The industrial accident board is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making such change.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R. C. M. 1921; amd. Sec. 3, Ch. 123, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

92-1105. (2993) **Intent and purpose of plan No. 3.** It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of said plan shall be liable to pay for injuries happening to employees coming under the provisions of the workmen's compensation act.

The industrial accident fund shall hereafter be known as the industrial insurance fund. Such fund shall consist of all premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money belonging to the fund.

The industrial insurance fund shall be neither more nor less than self supporting. Employments affected by the provisions hereof shall be divided by the board for the purpose of the fund into classes, whose rates may be readjusted at such times as the board may determine.

Separate accounts shall be kept of the amounts collected and expended in each class for determining rates but for payment of compensation and dividends the fund shall be one and indivisible. The board shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of a solvent industrial insurance fund, and the creation of surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk.

The board in fixing rates shall provide for the expenses of administering the fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an adequate catastrophe reserve, re-

serves adequate to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the board.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R. C. M. 1921; amd. Sec. 4, Ch. 123, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 5 of Ch. 123, Laws 1957 read "That section 92-1109 and 92-1111 of the Revised Codes of Montana of 1947 be repealed."

92-1109. (2997) **Repealed.**

Repeal

This section (Sec. 40, Ch. 96, L. 1915), relating to changes in classification of risks to be equalized, was repealed by Sec. 5, Ch. 123, Laws 1957.

92-1110. (2998) **Surplus in industrial insurance fund.** If at the end of any fiscal year, there exists in the industrial insurance fund an excess of assets over liabilities, and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the board may declare a dividend in such manner as the rules of the board may prescribe, to those employers who have paid premiums into the industrial insurance fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of such balance to which employer is entitled as dividends, the board shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R. C. M. 1921; amd. Sec. 6, Ch. 123, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

92-1111. (2999) **Repealed.**

Repeal

This section (Sec. 40, Ch. 96, L. 1915), relating to amount to be set apart when required payment reasonably certain, was repealed by Sec. 5, Ch. 123, Laws 1957.

92-1112. (3000) **Investment of reserve—payment of installments.** The treasurer of the board shall turn over such reserve to the state board of land commissioners to be invested and the same shall be invested by said state board of land commissioners as part of the long term investment fund and out of the same and its earnings shall be paid the monthly installments, and any lump sum, then or thereafter arranged for; provided, however, that when there is sufficient money in the industrial accident fund to meet such compensation payments, any surplus remaining may be placed in the industrial reserve fund and invested as specified in this section.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 921; re-en. Sec. 3000, R. C. M. 1921; amd. Sec. 17, Ch. 176, L. 1953.

Compiler's Note

Sections 1 to 16 of Ch. 176, Laws 1953 are compiled as sections 31-205, 68-701, 75-2708, 79-303, 79-304, 79-305, 79-1201, 79-1202, 79-1203, 79-1206, 79-1208, 79-1209, 79-1211, 79-1213, 79-1214 and 79-1216 respectively.

Amendment

The 1953 amendment substituted "turn over such reserve to the state board of land commissioners to be invested and the same shall be invested by said state board of land commissioners as part of the long term investment fund" for "invest such

reserve in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other security which may be approved by said board," and "as" for "by the board in the securities" near the end of the section.

Repealing Clause

Section 18 of Ch. 176, Laws 1953 repealed all acts and parts of acts in conflict therewith.

92-1114. (3002) **Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.** If any employer under plan No. 3 shall default in any payment to the industrial insurance fund, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The industrial accident board is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the workmen's compensation act for failure to pay the premiums due the industrial insurance fund; provided that when the industrial accident board makes an order cancelling an employer's right for failure to pay premiums to the industrial insurance fund it shall be the duty of the industrial accident board to make such order at least thirty (30) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties where the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices, to the effect that the industrial accident board has cancelled the right of the said employer to operate under the act; and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the workmen's compensation act.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when the board, in its discretion finds that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957.

Amendment

The 1957 amendment substituted "industrial insurance fund" for "industrial accident fund" each time it appears; inserted the words "under plan No. 3" near the beginning of the section and substituted "thirty (30) days" for "sixty (60) days."

Repealing Clause

Section 8 of Ch. 123, Laws 1957 repealed all acts or parts of acts in conflict therewith.

CHAPTER 12—SAFETY PROVISIONS

92-1211 to 92-1213. (3022 to 3024) **Repealed.**

Repeal

These sections (Sec. 52, Ch. 96, L. 1915), relating to inspection fees and fines, were repealed by Secs. 6 to 8 respectively, Ch. 176, Laws 1957.

REVISED CODES OF MONTANA

VOLUME 7

1957 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

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93-207. (8796) Repealed.

Repeal

This section (Sec. 1, Ch. 43, L. 1905), fixing the salaries of the justices of the supreme court, was repealed, as Sec. 8796, Revised Codes, 1935, by Sec. 4, Ch. 182, Laws 1949. For present law, see sec. 25-501.

93-214. (8803) Original jurisdiction.

Injunction

Supreme Court declined jurisdiction in action for injunction to restrain county officials from drawing or issuing certain warrants where numerous questions of fact were present which would require the taking of testimony and submission of other evidence which could be more speedily done in district court. Porter v. Thielen, 124 M 607, 214 P 2d 743.

Writ of Prohibition

The writ of prohibition may be issued to end litigation and save expense. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052, 1054.

Supreme Court had jurisdiction to grant writ of prohibition to prevent payment of grand jury illegally in session. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

References

Cited in State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

93-215. (8804) Appellate jurisdiction.

References

Cited or applied in Bond v. Birk, 126 M 250, 247 P 2d 199, 206.

93-216. (8805) Powers and duties of supreme court on appeals.

Equity Appeals

In an equity case, where no cause appears why a new trial or the taking of further evidence should be ordered, it is the court's duty to finally determine the same. Fey v. A. A. Oil Corporation, — M —, 285 P 2d 578, 589.

Equity Cases

Under this section the Supreme Court is authorized in reviewing the decrees in equity cases, where all of the facts were presented on an appeal and showed that the cause was ripe for an ultimate decision, to make such disposition of the case as the court below ought to have made; the reluctance of an occasional judge to abide by and apply the foregoing mandates of the legislature neither repeals nor changes the statute. Bond v. Birk, 126 M 250, 247 P 2d 199, 205, 206.

Examination of Evidence in Equity Proceedings and Disposition of Cases

In equity cases Supreme Court has right to make independent findings of fact after a review of all evidence, but if there is in the record substantial evidence supporting the findings of the trial court Supreme Court will not interfere with those findings. Sanders v. Sanders, 124 M 595, 229 P 2d 164. (The court was evenly divided on this point, see dissenting opinion.)

Function of Supreme Court as to Questions of Fact

In an equity case on appeal the court reviews all questions of fact arising upon the evidence presented and determined such questions of fact as well as the questions of law, unless for good cause, a new trial or the taking of further evidence is ordered in the court below. Hart v. Barron, 122 M 350, 204 P 2d 797, 804.

Operation and Effect

Under the power granted to the Supreme Court by this section, the court may direct that a proper judgment be entered in any case. Thus in a quiet title action, where the lower court found that at the time of the commencement of the action the plaintiff was in ownership, but the judgment states that since the filing of the complaint and at all times thereto the plaintiff was in ownership, the judgment is modified to conform with the findings. Warren v. Warren, 127 M 259, 261 P 2d 364, 366.

References

Cited or applied in Miller v. Miller, 121 M 55, 190 P 2d 72; Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 553; Higby v. Hooper, 124 M 331, 221 P 2d 1043, 1048; Sullivan v. Marsh, 124 M 415, 225 P 2d 868, 871; Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 893; Rooney v. Ford, 127 M 92, 256 P 2d 1090, 1093, 1094; Erdmann v. Erdmann, 127 M 252, 261 P 2d 367, 370; In re Sikorski's Estate, 127 M 563, 268 P 2d 395, 399; In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1089 (dissenting opinion); In re Minder's Estate, 128 M 1, 270 P 2d 404, 408; Hjermstad v. Barkuloo, 128 M 88, 270 P 2d 1112, 1118; In re Spoya's Estate, — M —, 282 P 2d 452, 457; Bennett v. Dodgson, — M —, 284 P 2d 990, 994; Richland County v. Anderson, — M —, 291 P 2d 267, 274; Hansen v. Hansen, — M —, 297 P 2d 879, 884.

93-219. Judge becoming candidate for elective office—resigning of supreme court office—exceptions—vacancy. Whenever any person holding or occupying the office of chief justice or associate justice on the supreme court of the state of Montana shall become a candidate for election to any elective office under the laws of/or in the state of Montana, such person shall forthwith, and in any event at or before the time required for such person to file as a candidate for such office at any primary or special or general

election, resign said office of chief justice or associate justice of said supreme court except where such person is a bona fide candidate for re-election to the identical office then held or occupied by him or for another nonpartisan judicial office the term of which shall commence not earlier than the end of the term of the office then held or occupied by such justice and said resignation shall become effective forthwith on delivery of the same to the proper officer or superior, and in the event of failure so to resign said office of chief justice or associate justice of said supreme court or of district judge of any of said district courts the same shall, ipso facto, become wholly vacant and unoccupied and the said former holder or occupant shall have no further right, power, or authority therein for any purpose, and no right to any emoluments thereof, notwithstanding the fact that a successor is not appointed or elected; and said vacancy shall become operative to deprive any person of the emoluments of said office then held in order to carry out the policy of this act.

History: En. Sec. 1, Ch. 139, L. 1957.

Title of Act

An act providing that any justice of the supreme court of the state of Montana who becomes a candidate for any elective office except as a bona fide candidate for re-election to the office then occupied by such justice shall at or before filing for said elective office as required by law resign the office then held; providing that the office of any said justice of the said supreme court failing to so resign shall become vacant; giving directions with reference to the filling of such vacancy and for the repeal of any and all acts, statutes or code provisions in conflict therewith; and providing for an effective date.

93-220. Filling vacancy. In all cases the proper appointing or other power shall promptly fill all vacancies occurring because of the provisions of this act by appointment of competent and qualified persons according to law.

History: En. Sec. 2, Ch. 139, L. 1957.

Repealing Clause

Section 3 of Ch. 139, Laws 1957 read "All acts and parts of acts, statutes and/or code provisions inconsistent herewith are, and each thereof is, hereby expressly repealed."

Effective Date

Section 4 of Ch. 139, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 3—DISTRICT COURTS

Section 93-302. Number of judges.
93-303. Salaries of district judges.
93-305. Expenses when sitting out of district, or attending judges' conference.
93-314. Itemized statements—verification—filing.

93-301. (8812) Judicial districts defined.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State v. Saginaw, 124 M 225, 220 P 2d 1021, 1024.

93-302. (8813) **Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district, and whose term of office must be four (4) years, to wit: In the first, second, fourth, eighth, eleventh and sixteenth, two judges each, in the thirteenth, three judges, and, in all other districts, one judge each.

Appointment and election of judge. That on or before July 1, 1957, the governor of this state shall designate and appoint a judge of the said eleventh judicial district who shall hold office until the general election to be held during the year 1958, and until his successor is elected and qualified. The judge elected at the general election during the year 1958 shall hold office until his successor has been elected and qualified at the presidential general election to be held during the year 1960.

History: En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1929; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957.

Amendments

The 1955 amendment in the first paragraph deleted the word "thirteenth" from the list of districts having two judges each and inserted the words "in the thirteenth, three judges and," and added the second paragraph.

The 1957 amendment in the first paragraph added "eleventh" to the list of districts having two judges each and in the second paragraph inserted the words "and election" to the heading of said paragraph, substituted "eleventh" for "thirteenth," "general election to be held during the year 1958" for "next general election" and added the second sentence.

Repealing Clauses

Section 2 of Ch. 18, Laws 1955 and Sec. 2 of Ch. 91, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 18, Laws 1955 provided the act should be in effect immediately upon its passage and approval. Approved February 11, 1955.

Section 3 of Ch. 91, Laws 1957 provided the act should be in effect immediately upon its passage and approval. Approved March 4, 1957.

93-303. (8814) **Salaries of district judges.** The annual salary of each district judge shall be nine thousand dollars ($9,000.00).

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955.

Amendments

The 1951 amendment raised the salary from $6,000 to $7,500.

The 1955 amendment raised the salary from $7,500 to $9,000.

Repealing Clauses

Section 2 of Ch. 84, Laws 1951 and Sec. 2 of Ch. 247, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 84, Laws 1951 provided the act should be in effect from and after December 1, 1952.

Section 3 of Ch. 247, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 11, 1955.

93-305. (8816) **Expenses when sitting out of district, or attending judges' conference.** Every judge who shall sit in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own, or in the supreme court, or who shall attend a conference of judges in Helena called by the chief justice of the supreme court, shall be paid his actual expenses while engaged in that service as follows: His actual traveling expenses in going from the county seat which he makes his place of residence to the place of trial, or conference, and return, and his board and lodging while engaged in the trial, hearing, or conference.

History: En. Sec. 1, Ch. 3, L. 1907; Sec. 293, Rev. C. 1907; re-en. Sec. 8816, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1953.

Amendment

The 1953 amendment added the provisions in this section relating to a conference of judges.

Judges⇐22(10).
48 C.J.S. Judges § 36.

93-309. (8820) Vacancies.

Retirement

Retirement of a district judge under the provisions of sections 68-101 to 68-1313 creates a vacancy which must be filled by the governor. State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 425.

93-310. (8821) District courts by judges of other counties.

Authority of Judge

This section and section 93-2906 give a judge called in under the provisions of section 93-901 the authority to draw additional jurors from jury box No. 3 for the remainder of the term under the provisions of section 93-1510. State v. Hay, 120 M 573, 194 P 2d 232, 234.

93-312. (8823) Governor may require judge to hold court, etc.

Authority of Governor

Where there is a duly qualified and acting judge in district governor is without power to order judges of other district into various counties of his district to assume judicial powers in such county. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

This section does not empower the governor to exclude or remove from office the duly elected qualified and acting judge of a judicial district. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

Judge Declining to Perform Duties

If a judge declines to properly perform his official duties, relief must be had from the supreme court rather than from the executive power of the state. State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747.

93-314. (8825) Itemized statements—verification—filing. On the first of each month, or within three (3) days thereafter, such district judge, who may desire to avail himself of the provisions of this act, shall make out an itemized claim against the state of Montana, showing, with dates and particulars, all moneys by him, within the preceding month, paid out and expended for and on account of such expenses; and shall verify such claim by making thereon or appending thereto his sworn affidavit that the items of the claim are true and correct, and are wholly unpaid, and that the expenditures therein enumerated were actually and necessarily made in the discharge of official business while away from home. He shall then file such claim with the clerk of the state board of examiners. At the first meeting of the board thereafter, the state board of examiners shall allow such claim, if properly verified, as above provided, and order a warrant drawn in payment thereof, and the state auditor shall thereupon, and in pursuance thereof, draw and issue a warrant of the state of Montana in payment of such claim, and forward the same to the claimant and take a receipt therefor.

History: En. Sec. 2, Ch. 91, L. 1911; reen. Sec. 8825, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1951.

Amendment

The 1951 amendment substituted "On the first of each month" for "Twice a year, on the first days of January and July of each year" and substituted "within the preceding month" for "within the last preceding six months."

93-315. (8826) Terms of court.

Terms—Effect on Grand Jury

Although district court is always open and each term continues until the succeeding term, the terms as fixed by the court limit the existence of the grand jury, the beginning of each term constituting a "final adjournment" of the preceding term within the meaning of section 94-6314. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

References

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1024.

93-318. (8829) Original jurisdiction.

Aggregation of Causes of Action

Held, that where there are several causes of action, each for less than the jurisdictional minimum for the district court, they may be prosecuted in the district court where their aggregate exceeds the jurisdictional minimum. Stokke v. Graham, — M —, 281 P 2d 1025, 1026. See, however, the concurring opinions, — M —, 281 P 2d 1025, 1027.

References

Cited in Benson v. Benson, 121 M 439, 193 P 2d 827, 829; State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

93-320. (8831) Process.

References

Cited or applied in Fraser v. Clark, 128 M 160, 273 P 2d 105, 114.

93-321. (8832) Terms and departments of court, etc.

Operation and Effect

Where a criminal case was assigned an odd number and under the rules in force under this section for the district court of the first judicial district, all civil and criminal cases bearing an odd number shall be assigned to department one of said court, it was not within the authority of the judge of department two to rule on a motion to suppress certain evidence and such proceedings under department two were void. State ex rel. Magnuson v. District Court, 125 M 79, 231 P 2d 941, 942, 944.

CHAPTER 5—GENERAL PROVISIONS RESPECTING THE POWERS, PROCEEDINGS AND HOLDING OF COURTS OF JUSTICE

93-502. (8845) Courts of record may make rules.

References

Cited or applied in State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 259, 2 ALR 2d 1050; State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; Sullivan v. Board of County Comrs., 124 M 364, 224 P 2d 135, 137.

93-506. (8849) Days on which courts, etc., may be held.

Cross-Reference

See note to sec. 93-507. Miller v. Emerson, 120 M 380, 186 P 2d 220.

93-507. (8850) Nonjudicial days.

Failure to Object to Proceedings

By failure to interpose timely objection or by consenting to proceed with the case a party waives his right to object to proceedings conducted on a holiday. Miller v. Emerson, 120 M 380, 186 P 2d 220, 222.

CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS

93-901. (8868) Cases in which judge may be disqualified, etc.

Affidavit of Disqualification by Attorney

When an attorney makes the affidavit of disqualification for bias he should make it on his own belief that his client cannot have a fair trial. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 93.

Application of Section

The provisions of subd. 4 of this section apply not only to ordinary law suits but to any "action, motion or proceeding" including proceedings for the establishment of an irrigation district. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 256.

Where a judge in a probate proceeding is disqualified for imputed bias and prejudice under this section, the procedure for calling in another judge is under this section and not under section 91-2001 which has no application when the disqualification is for imputed bias and prejudice. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1078.

Authority of Called Judge

A judge called in under the provisions of this section has the right under the provisions of section 93-1510 to draw additional jurors from jury box No. 3 to serve for the remainder of the term. State v. Hay, 120 M 573, 194 P 2d 232, 234.

Authority of Disqualified Judge

Upon the filing of the affidavit under subd. 4, the judge as to whom such disqualification is averred is without authority to act further in the action, motion or proceeding except as the doing of purely ministerial act of arranging the calendar, regulating the order of business, calling in another judge, or transferring the case if transfer is proper. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 244; State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, 455.

Where the regularly presiding judge was disqualified and thereafter the second judge was disqualified, the regular presiding judge had the power to arrange the calendar and call in another judge. Fuller v. Gibbs, 122 M 177, 199 P 2d 851, 855.

Change of Venue

The district judge's compliance with this section is a condition precedent to obtaining a change of venue under section 93-2906. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

Disqualified Judge

Where, during the course of a divorce proceeding a judge is disqualified and another judge assumes jurisdiction and commits the husband to jail for contempt, on a habeas corpus petition brought by the jailed husband the disqualified judge would not be authorized to act and a writ of prohibition will lie to prohibit such judge from proceeding further in the habeas corpus matter. State v. District Court of Lewis and Clark County, — M —, 295 P 2d 233.

Filing of Affidavit—Effect

The mere filing of the affidavit ipso facto works the disqualification of the judge against whom it is directed. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 244.

The mere filing of such affidavit ipso facto worked the disqualification of the judge against whom it was directed and except as is expressly provided in and allowed by the provisions of subdivision 4 of section 93-901, all orders in the cause made by the judge subsequent to the filing of the affidavit of disqualification against said judge are set aside, vacated and held for naught as null and void for want of jurisdiction. State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 849.

Grounds for Disqualification

The fact that the judge had previously heard some criminal matter against the person who was acting as the agent of the defendant but who was not a party to the action himself was not a ground for disqualification. Gibbs v. Fuller, 120 M 516, 188 P 2d 426, 428.

Juvenile Delinquency Proceedings

From a reading of the statutes governing juvenile matters it is apparent that the legislative intent is that juvenile matters and proceedings are to be treated as civil and not as criminal proceedings and therefore the provisions of this section relating to the disqualification of judges applies to juvenile delinquency proceedings. State ex rel. Ostoj v. McClernan, — M —, 284 P 2d 252, 254.

Mandamus

In action for mandamus to require district judge to call in another judge after affidavit of disqualification, judge cannot defend that the relatrix had not consented to the filing of the affidavit nor to the institution of the mandamus proceeding, where no attempt was made to raise such question under section 93-2121. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 93.

Number of Disqualifications

Where plaintiff had already disqualified two judges, he had no right to disqualify another judge for bias or prejudice. Gibbs v. Fuller, 120 M 516, 188 P 2d 426, 428.

Where judgment was obtained in action to quiet title, a subsequent proceeding for a writ of possession was a proceeding in the same action for the enforcement of the judgment and therefore when two judges had been disqualified for bias or prejudice in the original proceeding an attempted disqualification of another judge by the defendant in the proceeding for writ of possession was of no effect. Fuller v. Gibbs, 122 M 177, 199 P 2d 851, 853.

Operation and Effect

This section and section 93-2906 are companion sections and must be construed together. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

The disqualification provided for in subd. 4 of this section stands upon the same level of importance as do those provided for in the preceding three subdivisions, except as to the time when the imputation may be made, and operates as effectively if invoked at the proper time. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 245.

Probate Proceedings

The word "proceeding" used in this section applies to a probate proceeding, thus permitting the disqualification of judges therein for imputed bias. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 550.

A proceeding for the administration of an estate of a deceased person advances step by step through various stages of the proceeding and involves successive determinations in the course of such proceeding. The term "proceeding" is used in the Probate Code as a general designation of the entire judicial procedure employed whereby the law is administered upon the various subjects within the probate jurisdiction. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 549, 550.

Where appellant filed a petition for letters of special administration and for probate of a will, which will was contested and during which appellant disqualified one judge for bias, and subsequent to the first petition, other parties filed a petition for letters of administration and appellant disqualified one judge for bias from hearing such petition, the appellant could not disqualify another judge from hearing the second petition since he had already disqualified the maximum of two judges as allowed by this section. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546. (See, however, dissenting opinions of Justices Angstman and Anderson in 126 M 586, 256 P 2d 546 at pages 551 and 552 respectively.)

Proof of Alleged Bias and Prejudice Is Neither Required Nor Permitted

No inquiry as to the truth or falsity of the assertion of bias or prejudice can be permitted. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 93.

Time for Calling in New Judge

While a district judge against whom an affidavit of disqualification for implied bias has been filed may take the time reasonably necessary to ascertain what other judge or judges may be available to preside in the case, he must proceed in good faith and without unreasonable delay to call another judge. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 93.

A judge against whom an affidavit of disqualification has been filed ought not to be permitted to delay for ten months the calling in of another judge to sit in the case simply because he has not sooner been able to find a district judge who will accept such jurisdiction in conformity with the rules of his court. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

When district judge fails to call in another judge within a reasonable time after the filing of an affidavit of bias, mandamus is the proper remedy. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

Time for Disqualification

A judge who has been called in and assumed jurisdiction of a case could be disqualified to hear a separate proceeding therein, long after he had actually exercised jurisdiction on other matters in the case. McLeod v. McLeod, 126 M 32, 243 P 2d 321. (This case rests upon Sullivan v. District Court, 122 M 1, 196 P 2d 452 inasmuch as the Sullivan case by necessary implication overrules any contrary conclusion of Stefonick v. District Court, 117 M 86, 157 P 2d 96.)

Where the judge in issuing a writ of prohibition set November 21, 1950 as the return date and defendant filed a demurrer, which was disposed of and then an answer to which plaintiff filed a reply so that the trial actually took place on April 25, 1951 upon the issues framed by the pleadings, an affidavit of disqualification of the judge for imputed bias and prejudice filed April 13, 1951 was timely. The return date stated in the writ of prohibition (November 21, 1950) was not the "day appointed or fixed for the hearing or trial" within the meaning of this section. Esterby v. Justice Court of Hellgate Township, 127 M 1, 256 P 2d 544.

Trial Date Fixed by Disqualified Judge

A judge though disqualified may still arrange the calendar and where hearing date was fixed by disqualified judge and subsequent notice that another judge had accepted jurisdiction was tantamount to a notice that the trial would proceed on the date fixed where no different date was arranged for. Gibbs v. Fuller, 120 M 516, 188 P 2d 426, 428.

Withdrawal of Affidavit

Upon the filing of the affidavit of disqualification, jurisdiction over the cause is lost, and disqualification cannot thereafter be waived by a withdrawal of the affidavit over the protests and objections of the opposite party. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 245.

The fact that the supreme court was not in session at the time the affidavit of disqualification was filed is no ground for permitting the withdrawal of the affidavit and proceeding with the same judge over the objection of the opposite party. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 256.

References

Cited or applied in State ex rel. Ken-

nedy v. District Court, 121 M 320, 194 P 2d 256, 263, 2 ALR 2d 1050; State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State ex rel. Gilreath v. District Court, 127 M 431, 265 P 2d 651, 653 (dissenting opinion).

Interest of judge in an official or representative capacity as disqualification. 10 ALR 2d 1307.

Power of successor judge taking office during term time to vacate, etc., judgment entered by his predecessor. 11 ALR 2d 1117.

CHAPTER 11—MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

93-1101. (8877) **Subsequent applications for orders refused, etc.**

References

Cited in State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 848.

CHAPTER 13—JURORS—QUALIFICATIONS AND EXEMPTIONS

93-1305. (8894) **Who may be excused.**

References

Cited or applied in State v. Hay, 120 M 573, 194 P 2d 232, 235.

Exclusion of attorneys from jury list in criminal cases. 32 ALR 2d 890.

CHAPTER 14—JURORS—SELECTION AND RETURN

Section 93-1401. Jury lists, by whom and when to be made.
93-1402. Selection of persons qualified to serve as trial jurors.
93-1404. Duty of clerk—jury boxes.

93-1401. (8896) **Jury lists, by whom and when to be made.** The chairman of the county commissioners, or in his absence, any member of the board of county commissioners, the county treasurer, and the county assessor, or any two of such officers, of each county must meet at the county seat of each county at the office of the county clerk on the second Monday of January of each year, for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable. The first meeting of such officers for the purpose of making such list is within ten [10] days after this code takes effect.

History: En. Sec. 240, C. Civ. Proc. 1895; re-en. Sec. 6342, Rev. C. 1907; re-en. Sec. 8896, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1949. Cal. C. Civ. Proc. Sec. 204.

Amendment

The 1949 amendment inserted the words "or in his absence, any member of the board of county commissioners" and the words "or any two of such officers."

Repealing Clause

Section 2 of Ch. 133, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 133, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

References

Cited in State v. Hay, 120 M 573, 194 P 2d 232, 235.

93-1402. (8897) **Selection of persons qualified to serve as trial jurors.** At the meeting, specified in the last section, the officers present must select, from the last assessment roll of the county, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in the last

chapter. Each name so appearing on said list shall be assigned a number which shall be placed opposite the name on the jury list and shall be considered the number of the juror opposite whose name it appears. Said numbers shall be consecutive from "1" to the total number of jurors.

History: En. Sec. 241, C. Civ. Proc. 1895; re-en. Sec. 6343, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1919; re-en. Sec. 8897, R. C. M. 1921; amd. Sec. 1, Ch. 168, L. 1957.

Amendment

The 1957 amendment added the second and third sentences.

References

Cited in State v. Hay, 120 M 573, 194 P 2d 232, 235.

93-1403. (8898) Lists delivered to clerk.

References

Cited in State v. Hay, 120 M 573, 194 P 2d 232, 235.

93-1404. (8899) **Duty of clerk—jury boxes.** The clerk shall prepare and keep a jury box and contents as follows: The number of each juror shall be written, typed or stamped on paper or other suitable material, and enclosed in separate black capsules, identical in all respects, and placed in a box of ample size to permit said capsules to be thoroughly mixed, and which said box shall be kept for that purpose and shall be known as, and plainly marked, "jury box No. 1." Said capsules may be used as often as necessary; provided, however, no capsule shall be used which is in any manner whatsoever defaced or disfigured, or so marked that it may be recognized or distinguished from the other capsules in said jury box No. 1. There shall be so enclosed in said box one number, and only one number, corresponding to the name of each juror on the jury list.

History: En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R. C. M. 1921; amd. Sec. 2, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 209.

Amendment

The 1957 amendment substituted the words "The clerk shall prepare and keep a jury box and contents as follows: The number of each juror shall be written, typed or stamped on paper or other suitable material, and enclosed in separate black capsules, identical in all respects, and placed" for the words "Immediately after the list has been delivered to him, the clerk must prepare suitable ballots, by writing the name of each person so selected, as contained in the list, with his place of residence and other additions, on a separate piece of paper. The ballots must be uniform, as nearly as may be, in appearance, and each ballot must thereafter be inserted in a black capsule, and when all the said ballots have been so inserted, the clerk must deposit them" and added the third sentence.

References

Cited in State v. Hay, 120 M 573, 194 P 2d 232, 235; State v. Porter, 125 M 503, 242 P 2d 984, 986.

93-1405. (8900) Repealed.

Repeal

This section (Sec. 244, C. Civ. Proc. 1895), relating to the ballot box and remaining ballots, was repealed by Sec. 10, Ch. 168, Laws 1957, effective January 1, 1958.

93-1406. (8901) Term of service of jurors.

Cross-Reference

See note to sec. 93-1504. State v. Allison, 122 M 120, 199 P 2d 279.

References

Cited in State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052, 1055.

CHAPTER 15—JURORS—DRAWING AND SUMMONING FOR COURTS OF RECORD

Section 93-1501. Summoning of trial jury.
93-1502. District judge to draw jury.
93-1503. Drawing—how conducted.
93-1504. Jury box No. 2.
93-1505. Jurors—when to be drawn from jury box No. 2.
93-1506. Jury box No. 3.
93-1510. Jurors drawn from jury box No. 3, when.
93-1511. Summoning jurors to complete a panel.

93-1501. (8902) **Summoning of trial jury.** At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than six (6) months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases, and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn, and the time at which the jurors are required to attend, which time may be at the same term in which the jurors are drawn, or at the next succeeding term, in the discretion of the court. And the court may direct that such causes, either criminal or civil, in which a jury may be required, or in which a jury may have been demanded, be continued and fixed for trial when a jury shall be in attendance.

History: En. Sec. 260, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 7, L. 1907; Sec. 6348, Rev. C. 1907; re-en. Sec. 8902, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1949. Cal. C. Civ. Proc. Sec. 214.

Amendment

The 1949 amendment inserted the first part of this section reading "At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than six (6) months and the plaintiff or defendant in such case has requested a jury trial or" and substituted the word "must" for "may" between the words "the court" and "make an order directing a trial jury."

Repealing Clauses

Section 2 of Ch. 62, L. 1949 repealed Chapter 277 of the Montana Session Laws of 1947 (secs. 93-4912 to 93-4915, Revised Codes 1947).

Section 3 of Ch. 62, L. 1949 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

See note to sec. 93-1510. State v. Hay, 120 M 573, 194 P 2d 232, 235.

Effect of juror's false or erroneous answer on voir dire in personal injury or death action as to previous claims of action for damages by himself or his family. 38 ALR 2d 624.

93-1502. (8903) **District judge to draw jury.** Immediately upon the order mentioned in the preceding section having been made the district judge shall in the presence of the clerk of the court proceed to draw the jurors by number from jury box No. 1.

History: En. Sec. 261, C. Civ. Proc. 1895; re-en. Sec. 6349, Rev. C. 1907; re-en. Sec. 8903, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1937; amd. Sec. 1, Ch. 3, L. 1939; amd. Sec. 3, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 215.

Amendment

The 1957 amendment inserted the words "by number."

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 986.

93-1503. (8904) **Drawing—how conducted.** 1. The clerk must place said box on a rod so that the same may readily revolve and said box must

be revolved a sufficient number of times so as to insure that the capsules in said box shall become thoroughly mixed, and thereafter the judge must draw from said box one at a time, as many of said capsules containing the numbers of jurors as are ordered by the court.

2. A minute of the drawing shall be entered in the minutes of the court, which must show the names of the jurors corresponding to the numbers so drawn from said jury box.

3. If the name of any person so drawn is deceased or insane, or who may have permanently removed from the county, and the fact shall be made to appear to the satisfaction of the court, the name of such person shall be omitted from the list, and another juror drawn in his place, and the fact shall be entered upon the minutes of the court. The same proceeding shall be had as often as may be necessary, until the number of jurors required shall have been drawn. After the drawing shall have been completed, the clerk shall make a copy of the list of names of the persons so drawn, and certify the same. In his certificate he shall state the date of the order and of the drawing, and the number of the jurors drawn, and the time when and the place where such jurors shall be required to appear. Such certificate and list shall be delivered to the sheriff for service.

History: En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1933; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 219.

Amendment

The 1957 amendment in subd. 1 substituted the word "numbers" for the word "names"; in subd. 2 substituted "names of the jurors corresponding to the numbers" for "name on each slip of paper" and in subd. 3 substituted the present first sentence for one which read "If the name of any person is drawn from said box who is deceased or insane, or who may have permanently removed from the county, or who is exempt from jury service, and the fact shall be made to appear to the satisfaction of the court, the name of such person shall be omitted from the list, and the slip of paper having such name on it shall be destroyed and another juror drawn in his place, and the fact shall be entered upon the minutes of the court."

93-1504. (8905) **Jury box No. 2.** After the adjournment of the term or session at which trial jurors have been returned, as prescribed in the last section, the clerk must deposit the capsules containing the numbers of the jurors who attended and served, in another box kept by him, known as and marked "jury box No. 2." The capsules containing the ballots with the numbers of those who did not appear and serve must be returned to the box from which they were taken.

History: En. Sec. 263, C. Civ. Proc. 1895; re-en. Sec. 6351, Rev. C. 1907; amd. Sec. 3, Ch. 35, L. 1919; re-en. Sec. 8905, R. C. M. 1921; amd. Sec. 5, Ch. 168, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted the words "numbers of the jurors" for the words "ballots with the names of those"; in the second sentence substituted "numbers" for "names" and deleted the words "which have not been destroyed as prescribed in the preceding section" which appeared between the words "serve" and "must."

Jurors Called But Not Serving

Where a panel of 89 persons was called and sworn as jurors for the term but were discharged before serving at any trial, such jurors had not served within the meaning of this section and it was proper to return such names to jury box No. 1 and not jury box No. 2. State v. Allison, 122 M 120, 199 P 2d 279, 284.

93-1505. (8906) **Jurors—when to be drawn from jury box No. 2.** If, at the time of drawing trial jurors for a term or session, there is not a sufficient number of capsules containing the numbers of jurors thereon remaining in box No. 1, the judge presiding, after drawing all the capsules containing therein the numbers of the jurors, must draw the necessary number from box No. 2, containing the numbers of those jurors who have before served, as prescribed in the last section; and must continue to draw from that box until new lists of jurors are provided.

History: En. Sec. 264, C. Civ. Proc. 1895; re-en. Sec. 6352, Rev. C. 1907; amd. Sec. 4, Ch. 35, L. 1919; re-en. Sec. 8906, R. C. M. 1921; amd. Sec. 2, Ch. 148, L. 1933; amd. Sec. 6, Ch. 168, L. 1957.

Amendment

The 1957 amendment substituted "the numbers of jurors" "the numbers of the jurors" and "the numbers of those jurors" for "ballots with the names of jurors" "ballots with the names of jurors thereon" and "the names of those jurors" respectively.

93-1506. (8907) **Jury box No. 3.** The clerk must keep, in addition to the two boxes specified in the last two sections, a third box, known as and marked "jury box No. 3," in which he must deposit capsules containing duplicate numbers of all persons selected and returned as trial jurors, who reside in the city or town where a trial term or session of a court of record is held, pursuant to law.

History: En. Sec. 265, C. Civ. Proc. 1895; re-en. Sec. 6353, Rev. C. 1907; amd. Sec. 5, Ch. 35, L. 1919; re-en. Sec. 8907, R. C. M. 1921; amd. Sec. 7, Ch. 168, L. 1957.

Amendment

The 1957 amendment substituted the word "numbers" for the words "ballots, with the names and the proper additions."

References

Cited in State v. Hay, 120 M 573, 194 P 2d 232, 235; State v. Porter, 125 M 503, 242 P 2d 984, 986.

93-1507. (8908) **Repealed.**

Repeal

This section (Sec. 266, C. Civ. Proc. 1895; amd. Sec. 6, Ch. 35, L. 1919), relating to the deposit of ballots in box No. 3, was repealed by Sec. 10, Ch. 168, Laws 1957, effective January 1, 1958.

93-1510. (8911) **Jurors drawn from jury box No. 3, when.** If a sufficient number of trial jurors, duly drawn and notified, do not attend or cannot be obtained in the opinion of the court, without great delay or expense to form a jury, the court may, in its discretion, direct the clerk to draw from box No. 3, in the presence of the court, the numbers corresponding to the names of as many jurors on the jury list as the court deems sufficient for that purpose.

History: En. Sec. 281, C. Civ. Proc. 1895; re-en. Sec. 6357, Rev. C. 1907; re-en. Sec. 8911, R. C. M. 1921; amd. Sec. 8, Ch. 168, L. 1957. Cal. C. Civ. Proc. Sec. 226.

Amendment

The 1957 amendment substituted the words "numbers corresponding to the names of as many jurors on the jury list" for the words "names of as many persons."

Called Judge—Authority

A judge called in under the provisions of section 93-901 has the authority to draw additional jurors from jury box No. 3 to serve for the remainder of the term. State v. Hay, 120 M 573, 194 P 2d 232, 234.

Operation and Effect

It was error for the trial judge to deny the defendant's motion to obtain additional jurors from jury box No. 1, when the inadequacy of the panel jury was called to the attention of the court six days before the case was to be tried, and at the trial the judge then called additional jurors from box No. 3. Defendant believed that a "Maine Street" jury would be antagonistic towards him and he made

a timely request to have the venire augmented by additional jurors drawn from the entire county. Failure to provide an adequate panel was an abuse of discretion and amounted to the systematic and calculated exclusion of persons residing throughout the county at large other than those living in the city of Helena. State v. Porter, 125 M 503, 242 P 2d 984, 986.

Right to Draw From Box No. 3

Where seventy jurors were drawn from jury box No. 1, there was no abuse of discretion in not drawing more and no constitutional rights were violated by drawing from jury box No. 3 after the original panel was exhausted. State v. Hay, 120 M 573, 194 P 2d 232, 235.

References

Cited in State v. Allison, 122 M 120, 199 P 2d 279, 283.

93-1511. (8912) **Summoning jurors to complete a panel.** The sheriff must forthwith notify each person whose number has been drawn and make a return as prescribed in section 93-1509.

History: En. Sec. 282, C. Civ. Proc. 1895; re-en. Sec. 6358, Rev. C. 1907; re-en. Sec. 8912, R. C. M. 1921; amd. Sec. 9, Ch. 168, L. 1957.

Amendment

The 1957 amendment substituted the words "whose number has been drawn" for the words "so drawn."

Repealing Clause

Section 10 of Ch. 168, Laws 1957 read "That sections 93-1405 and 93-1507, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 11 of Ch. 168, Laws 1957 provided the act should be in full force and effect from and after January 1, 1958.

CHAPTER 19—COURT STENOGRAPHERS

Section 93-1906. Salary and expenses of stenographer—apportionment.

93-1904. (8931) **To furnish copies to parties, etc.**

Application of Section

This section governs only the furnishing of copies of the transcript of record for use in the trial court and has nothing to do with appeals to the Supreme Court. Sullivan v. Board of County Comrs., 124 M 364, 224 P 2d 135, 136.

93-1906. (8933) **Salary and expenses of stenographer—apportionment.** Every stenographer appointed under the provisions of this chapter receives an annual salary of five thousand four hundred ($5,400.00) dollars and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The stenographer is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1927; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955. Cal. C. Civ. Proc. Secs. 271 and 274.

Amendments

The 1951 amendment raised the salary of the stenographer from $3,600 to $4,200.

The 1953 amendment raised the salary of the stenographer from $4,200 to $4,800 and added the proviso in the middle of the first sentence.

The 1955 amendment raised the salary of the stenographer from $4,800 to $5,400 and substituted the word "thereafter" for "after" near the end of the first sentence.

Repealing Clauses

Section 2 of Ch. 49, Laws 1951; Sec. 2 of Ch. 125, Laws 1953 and Sec. 2 of Ch. 76, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION—LICENSE AND DISBARMENT

93-2002. (8937) Qualifications, examination and admission.

Operation and Effect

Where an applicant took and failed the bar examination three times, the supreme court will not allow a petition by the applicant to admit the applicant on motion and without examination for this would set at naught the labors and recommendations of the board of law examiners and nullify the governing statutes and rules of the court. Petition of Bergen, 125 M 607, 233 P 2d 399.

CHAPTER 21—ATTORNEYS—POWERS—DUTIES—LIABILITIES AND COMPENSATION

93-2120. (8993) Lien for compensation.

Extent of Lien

Where, in second trial of conversion action, plaintiff obtained judgment against defendant, the attorney's lien on the judgment covered only the amount which would be realized on the judgment after costs accruing to defendant on appeal from first trial were deducted. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 635.

Notice

Under this section there is no need to file a notice of lien, the commencement of an action or the service of an answer containing a counterclaim being sufficient notice of the lien of the attorney. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 634.

Priority of Lien

While an attorney's lien is subordinate to the rights of the adverse party to offset judgments in the same actions or in actions based on the same actions or in actions based on the same transactions, it is nevertheless superior to any right to offset judgments obtained in wholly independent actions. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 634.

An attorney's lien for unpaid compensation is not superior to the adverse party's claim for costs accruing as a part of the litigation on the cause of action. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 635.

93-2121. (8994) Attorney may be compelled to show his authority.

References

Cited or applied in State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 93.

CHAPTER 22—JUDICIAL REMEDIES, ACTIONS AND SPECIAL PROCEEDINGS

93-2201. (8995) Judicial remedies defined.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 549.

93-2202. (8996) **Division of judicial remedies.**

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 549.

93-2203. (8997) **Action defined.**

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 549.

93-2204. (8998) **Special proceeding defined.**

Probate Proceedings

The administration of an estate of a deceased person is neither an action at law nor a suit in equity but it is a special proceeding. State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 549.

CHAPTER 23—FORM OF CIVIL ACTION

93-2301. (9008) **One form of civil action only.**

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999.

93-2303. (9010) **Special issues not made by pleadings—how tried.**

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999.

CHAPTER 24—TIME OF COMMENCING ACTIONS GENERALLY

93-2401. (9011) **Commencement of civil actions.**

Inclusion or exclusion of first and last day for purposes of statute of limitations. 20 ALR 2d 1249.

Estoppel to rely on statute of limitations. 24 ALR 2d 1413.

CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

Section
93-2502. When actions cannot be brought by grantee from the state.
93-2504. Seizin within five years—when necessary in actions for real property—action for dower.
93-2505. Such seizin, when necessary in action or defense arising out of title to or rents of real property.
93-2506. Entry on real estate.
93-2507. Possession—when presumed—occupation deemed under legal title, unless adverse.
93-2508. Occupation under written instrument or judgment—when deemed adverse.
93-2512. Relation of landlord and tenant as affecting adverse possession.
93-2513. Occupancy and payment of taxes necessary to prove adverse possession.
93-2515. Certain disabilities excluded from time to commence actions.
93-2516. Application of chapter to lands sold and conveyed by state.

93-2502. (9013) **When actions cannot be brought by grantee from the state.** No action can be brought for or in respect to real property by any person claiming under letters patent or grants from this state, unless the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the property in question within ten (10) years before the commencement of the action. In any such action the state of Montana may be made a party defendant, and shall have only the defenses thereto as are available to

other parties defendant to the action; provided that no judgment in any such action shall include damages, attorney fees or court costs against the state of Montana.

History: En. Sec. 481, C. Civ. Proc. 1895; re-en. Sec. 6430, Rev. C. 1907; re-en. Sec. 9013, R. C. M. 1921; amd. Sec. 1, Ch. 196, L. 1955. Cal. C. Civ. Proc. Sec. 316.

Amendment

The 1955 amendment substituted all that part of the section beginning with the words "unless the plaintiff * * *" for "unless the same might have been commenced by the state as herein specified, in case such patent had not been issued or grant made."

Repealing Clause

Section 2 of Ch. 196, Laws 1955 repealed all acts and parts of acts in conflict therewith.

93-2504. (9015) **Seizin within five years—when necessary in actions for real property—action for dower.** No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five [5] years before the commencement of the action. No action for the recovery of dower can be maintained by a widow unless the action is commenced within ten [10] years after the death of her husband.

History: Ap. p. Sec. 29, p. 45, L. 1877; re-en. Sec. 29, 1st Div. Rev. Stat. 1879; re-en. Sec. 29, 1st Div. Comp. Stat. 1887; amd. Sec. 483, C. Civ. Proc. 1895; re-en. Sec. 6432, Rev. C. 1907; re-en. Sec. 9015, R. C. M. 1921; amd. Sec. 1, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 318.

Amendment

The 1953 amendment substituted "five years" for "ten years" the first time it appeared in this section.

Operation and Effect

Where plaintiff's complaint alleges that "plaintiff is now the owner, entitled to possession," there is a presumption under section 93-2507 that the person establishing a legal title to the property is in possession thereof within the time required by law, and it is up to the other party to overcome the presumption with proof. Warren v. Warren, 127 M 259, 261 P 2d 364, 365.

References

Cited or applied in **Laas v. All Persons,** 121 M 43, 189 P 2d 670, 671; Barcus v. Galbreath, 122 M 537, 207 P 2d 559, 561; Clinton v. Miller, 124 M 463, 226 P 2d 487, 497; Bond v. Birk, 126 M 250, 247 P 2d 199, 200; Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 377.

93-2505. (9016) **Such seizin, when necessary in action or defense arising out of title to or rents of real property.** No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within five [5] years before the commencement of the act in respect to which such action is prosecuted or defense made.

History: Ap. p. Sec. 30, p. 45, L. 1877; re-en. Sec. 30, 1st Div. Rev. Stat. 1879; re-en. Sec. 30, 1st Div. Comp. Stat. 1887; amd. Sec. 484, C. Civ. Proc. 1895; re-en. Sec. 6433, Rev. C. 1907; re-en. Sec. 9016, R. C. M. 1921; amd. Sec. 2, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 319.

Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

Operation and Effect

The bringing of an action against one in adverse possession disputing his title arrests the running of the statute. Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 378.

Pleading

Since a person in adverse possession can acquire no new right as against the plaintiffs by the mere fact that they remain in

possession during the pendency of the action it follows that a pleading of adverse possession by defendants for ten years is insufficient to constitute a defense unless it is alleged that the ten years were before the commencement of the action, and the trial court erred in sustaining a motion for judgment on the pleadings and in entering judgment thereon for defendants. Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 378.

Possession By Constructive Trustee

Where daughter deeded property to mother to be held in trust for her and later mother deeded property to another daughter with the understanding that it was to be held for the benefit of the first daughter, the possession of the mother and the second daughter was the possession of and for the first daughter and therefore an action by the first daughter to recover the property was not barred. Opp v. Boggs, 121 M 131, 193 P 2d 379, 384.

References

Cited or applied in Laas v. All Persons, 121 M 43, 189 P 2d 670, 671; Bond v. Birk, 126 M 250, 247 P 2d 199, 200.

93-2506. (9017) **Entry on real estate.** No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one [1] year after making such entry, and within five [5] years from the time when the right to make it descended or accrued.

History: Ap. p. Sec. 3, p. 466, Bannack Stat.; re-en. Sec. 3, p. 515, Cod. Stat. 1871; amd. Sec. 31, p. 46, L. 1877; re-en. Sec. 31, 1st Div. Rev. Stat. 1879; re-en. Sec. 31, 1st Div. Comp. Stat. 1887; amd. Sec. 485, C. Civ. Proc. 1895; re-en. Sec. 6434, Rev. C. 1907; re-en. Sec. 9017, R. C. M. 1921; amd. Sec. 3, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 320.

Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

93-2507. (9018) **Possession—when presumed—occupation deemed under legal title, unless adverse.** In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for five [5] years before the commencement of the action.

History: En. Sec. 4, p. 466, Bannack Stat.; re-en. Sec. 4, p. 515, Cod. Stat. 1871; amd. Sec. 32, p. 46, L. 1877; re-en. Sec. 32, 1st Div. Rev. Stat. 1879; re-en. Sec. 32, 1st Div. Comp. Stat. 1887; amd. Sec. 486, C. Civ. Proc. 1895; re-en. Sec. 6435, Rev. C. 1907; re-en. Sec. 9018, R. C. M. 1921; amd. Sec. 4, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 321.

Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

Possession Under Contract for Deed

Possession under contract for deed was subordinate to title of owner. Hinton v. Staunton, 124 M 534, 228 P 2d 461, 463.

References

Cited or applied in Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 486; Kenney v. Bridges, 123 M 95, 208 P 2d 475, 478; Warren v. Warren, 127 M 259, 261 P 2d 364, 365; Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 377.

Acquisition of title to mines or minerals by adverse possession. 35 ALR 2d 124.

Good faith as affecting acquisition of title to mines or minerals by adverse possession. 35 ALR 2d 138.

Possession of mortgagor or successor in interest as adverse to purchaser at foreclosure sale. 38 ALR 2d 348.

Void tax deed, tax sale certificate, and the like, as constituting color of title. 38 ALR 2d 986.

Grantor's possession as adverse possession against grantee. 39 ALR 2d 353.

93-2508. (9019) **Occupation under written instrument or judgment—when deemed adverse.** When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instru-

ment, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property, under such claim, for five [5] years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one [1] lot is not deemed a possession of any other lot of the same tract.

History: En. Sec. 33, p. 46, L. 1877; re-en. Sec. 33, 1st Div. Rev. Stat. 1879; re-en. Sec. 33, 1st Div. Comp. Stat. 1887; amd. Sec. 487, C. Civ. Proc. 1895; re-en. Sec. 6436, Rev. C. 1907; re-en. Sec. 9019, R. C. M. 1921; amd. Sec. 5, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 322.

Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

Color of Title

A tax deed, though void, is ample as color of title so as to sustain the claim of adverse possession. Hentzy v. Mandan Loan & Investment Co., — M —, 286 P 2d 325, 327.

Color of title may be evidenced by a contract for the sale of land. An instrument which purports to convey the land or the right to its possession is sufficient color of title as a basis for adverse possession if the claim is made in good faith. Hentzy v. Mandan Loan & Investment Co., — M —, 286 P 2d 325, 327.

Tacking Possession

A wife may tack her possession on to that of her husband prior to his death and it is not necessary that the relationship of husband and wife be established by probate proceedings before this can be done where the relationship is admitted by the pleadings. Barcus v. Galbreath, 122 M 537, 207 P 2d 559, 564.

References

Cited or applied in Pritchard Petroleum Co. v. Farmers' Co-op. Oil & Supply Co., 121 M 1, 190 P 2d 55, 61; Laas v. All Persons, 121 M 43, 189 P 2d 670, 672.

Adverse possession: sufficiency, as regards continuity, of seasonal possession other than for agricultural or logging purposes. 24 ALR 2d 632.

93-2509. (9020) **What constitutes adverse possession, etc.**

Facts Showing Adverse Possession

Where plaintiffs inclosed the land with barbed wire fence, cultivated the land, executed an oil and gas lease on the land, and mortgaged the land, there were sufficient facts to show adverse possession. Laas v. All Persons, 121 M 43, 189 P 2d 670, 674.

Where defendant paid taxes on land for more than ten years [since amended], staked out the land in lots and leased it at various times for different purposes, and the land was in defendant's name in the tax records, evidence was sufficient to show adverse possession. Kenney v. Bridges, 123 M 95, 208 P 2d 475.

References

Cited or applied in Hentzy v. Mandan Loan & Investment Co., — M —, 286 P 2d 325, 326.

93-2512. (9023) **Relation of landlord and tenant as affecting adverse possession.** When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five [5] years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five [5] years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods prescribed in this section.

History: En. Sec. 37, p. 47, L. 1877; re-en. Sec. 37, 1st Div. Rev. Stat. 1879; re-en. Sec. 37, 1st Div. Comp. Stat. 1887; amd. Sec. 491, C. Civ. Proc. 1895; re-en. Sec. 6440, Rev. C. 1907; re-en. Sec. 9023, R. C. M. 1921; amd. Sec. 6, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 326.

Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenant. 32 ALR 2d 1214.

93-2513. (9024) **Occupancy and payment of taxes necessary to prove adverse possession.** In no case shall adverse possessions be considered established under the provisions of any section or sections of this code unless it shall be shown that the land has been occupied and claimed for a period of five [5] years continuously, and the party or persons, their predecessors and grantors, have, during such period, paid all the taxes, state, county, or municipal, which have been legally levied and assessed upon said land.

History: En. Sec. 1, Ch. 3, L. 1917; re-en. Sec. 9024, R. C. M. 1921; amd. Sec. 7, Ch. 224, L. 1953.

Amendment

The 1953 amendment substituted "five years" for "ten years" in this section.

Operation and Effect

Where plaintiff and his predecessor had remained in open, exclusive, notorious and adverse possession of an abandoned river channel since 1936 and had paid taxes on improvements thereon but not on the real property because none had been assessed it was sufficient for adverse possession. Helland v. Custer County, 127 M 23, 256 P 2d 1085.

Payment of Taxes

This section requires the payment of taxes only if there are any to be paid. Barcus v. Galbreath, 122 M 537, 207 P 2d 559, 564.

Payment of Taxes—Time for Payment

All that is required under this section is that the claimant shall have claimed the land for a period of ten years [since amended] continuously and that he has paid all taxes levied during that period, but it is not necessary that each year's taxes should have been paid when due. Laas v. All Persons, 121 M 43, 189 P 2d 670, 675.

It is not necessary that the taxes be paid each year as assessed to meet the requirements of this section. Barcus v. Galbreath, 122 M 537, 207 P 2d 559, 564.

Possession Under Contract for Deed

Person holding possession of land under contract for deed could not establish title by adverse possession. Hinton v. Staunton, 124 M 534, 228 P 2d 461, 463.

References

Cited or applied in Opp v. Boggs, 121 M 131, 193 P 2d 379, 385; Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 486; Lamping v. Diehl, 126 M 193, 246 P 2d 230, 235; Hentzy v. Mandan Loan & Investment Co., — M —, 286 P 2d 325, 327.

Tacking adverse possession of area not within description of deed or contract. 17 ALR 2d 1128.

93-2515. (9026) **Certain disabilities excluded from time to commence actions.** If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or for dower, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, is at the same time such title first descends or accrues, either

1. Within the age of majority; or,

2. Insane; or,

3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term of less than for life.

The time during which disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five [5] years after such disability shall cease, or after the death of the person entitled, who shall

die under such disability; but such action shall not be commenced or entry, or defense made, after that period.

History: Ap. p. Sec. 39, p. 48, L. 1877; re-en. Sec. 39, 1st Div. Rev. Stat. 1879; re-en. Sec. 39, 1st Div. Comp. Stat. 1887; amd. Sec. 493, C. Civ. Proc. 1895; re-en. Sec. 6442, Rev. C. 1907; re-en. Sec. 9026, R. C. M. 1921; amd. Sec. 8, Ch. 224, L. 1953. Cal. C. Civ. Proc. Sec. 328.

Amendment

The 1953 amendment inserted the word "same" before the word "time" in the first sentence and substituted "five years" for "ten years."

Separability Clause

Section 9 of Ch. 224, Laws 1953 read: "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision, or part directly adjudged to be invalid, inoperative or unconstitutional."

Repealing Clause

Section 10 of Ch. 224, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 224, Laws 1953 provided the act should be in effect from and after July 1, 1953.

Minority—Time for Bringing Suit

Where the youngest of the heirs attained his majority more than ten years [since amended] before action to establish title to land, and they brought no action within that time, they could not defend such suit by party holding under tax deed and by adverse possession, on the ground that the heirs were minors at the time the tax deed was procured. Laas v. All Persons, 121 M 43, 189 P 2d 670, 674.

Tolling of statute of limitations where process is not served before expiration of limitation period as affected by statute, defining commencement of action, or expressly relating to interruption of running of limitations. 27 ALR 2d 236.

93-2516. Application of chapter to lands sold and conveyed by state. The provisions of this chapter shall apply to all lands heretofore sold and conveyed by the state of Montana for which a valid consideration was received by the state, provided, that the state, at the time of any such sale or conveyance, was not precluded by the Constitution of Montana or by the terms of the grant of such lands by the United States from selling and disposing of the same; and provided further, that no occupant of a public way or other ground dedicated or appropriated by the state to public use, and not subject to sale, shall acquire by reason of his occupancy any title thereto.

History: En. Sec. 1, Ch. 195, L. 1955.

Title of Act

An act to add to Chapter 25, Title 93, Revised Codes of Montana, 1947, by inserting section 93-2516, making the provisions of said Chapter 25, Title 93, applicable to certain lands heretofore sold and conveyed by the state of Montana.

Repealing Clause

Section 2 of Ch. 195, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 26—LIMITATION OF OTHER ACTIONS

93-2601. (9027) **Periods of limitation prescribed.**

References

Cited or applied in Kujich v. Lillie, 127 M 125, 260 P 2d 383, 385.

93-2602. (9028) **Within ten years.**

Absence of judgment debtor from state as suspending or tolling running of period of limitations as to judgment. 27 ALR 2d 839.

93-2603. (9029) Within eight years.

Action on Bond for Deed

Action to enforce "bond for deed" for certain mining rights in land was barred by this section. Clinton v. Miller, 124 M 463, 226 P 2d 487.

Effect of Suspension of Foreign Corporation

Held, that the suspension of a foreign corporation for nonpayment of taxes does not suspend the running of the statute of limitations, and hence an action based on a mortgage would be barred after eight years under this section. The suspension does not result in an inability to get service of process on the foreign corporation for section 93-3007 provides for such service and section 93-3011 states that it is personal service so that a personal judgment may be entered on such service. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325.

Part Payment—Proof

Where the plaintiff in an action on a note executed in 1931 and payable within 90 days pleaded part payment in 1934 and 1938 to bar the statute of limitations, he has the burden of proof that the payments were made, and it is not sufficient to show the indorsement on the back of the note. An indorsement of a payment on a note by the holder does not create a presumption that the payment was made at the time that the indorsement indicates. Wight v. Stevenson, 126 M 377, 252 P 2d 241.

Violation of Trust

In an action for an accounting, assuming that there was a trust relationship, when the plaintiff beneficiary in 1925 made complaint to the defendant as to how the expenses were charged and defendant denied that its conduct was wrong and continued to make similar charges, the statute of limitations began to run at that time, since at that time the plaintiff knew that the trust was being violated. Potlatch Oil & Refining Co. v. Ohio Oil Co., 199 F 2d 766, 770.

References

Cited or applied in Clarke v. Chamberlain, 124 M 405, 225 P 2d 477, 481.

Entry or indorsement by creditor on note, bond, or other obligation as evidence of part payment which will toll the statute of limitations. 23 ALR 2d 1331.

93-2604. (9030) Within five years.

Commencement of Period — Resulting Trust

Statute of limitations does not commence to run in favor of the trustee of a resulting trust until the trustee disavows the trust or asserts some right inconsistent with it. Campanello v. Mercer, 124 M 528, 227 P 2d 312.

Offset

Where debt was barred by five-year statute of limitations it could not be set up as an offset in a suit on a note and mortgage not arising out of the same transaction. Francisco v. Francisco, 120 M 468, 191 P 2d 317, 321, 1 ALR 2d 625.

Revival of Obligation

Even though original debt is barred by statute of limitations, it is sufficient consideration for a subsequent note and new promise to pay, and such new note revives the obligation. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 377.

References

Cited in Potlatch Oil & Refining Co. v. Ohio Oil Co., 199 F 2d 766, 770.

93-2605. (9031) Within three years.

Operation and Effect

Where accident, in which defendant was driving, occurred November 26, 1941 and defendant died within three years thereof and letters of administration for his estate issued December 13, 1944, and an action for tort against the estate was instituted December 11, 1945 within one year after the issuing of letters testamentary, the action was timely under section 93-2704 which provides that if a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration. Kujich v. Lillie, 127 M 125, 260 P 2d 383, 385.

References

Cited in footnote 5 in Zellmer v. Acme Brewing Co., 184 F 2d 940, 943.

93-2607. (9033) Two-year limitation.

Subd. 4

Applies to Actions for Fraud or Mistake as Commonly Used

This section applies only to fraud or mistake within the common acceptance of the term. Opp v. Boggs, 121 M 131, 193 P 2d 379, 385.

Real Property Held in Trust

Where daughter conveyed real property to her mother with the understanding that it was to be held in trust for her, and mother then deeded property to another daughter with the understanding that it was to be held in trust for the first daughter, an action brought by the first daughter to recover the property was not based on fraud but upon a failure to comply with the promise to reconvey the property and was therefor not barred by this section. Opp v. Boggs, 121 M 131, 193 P 2d 379, 385.

References

Cited or applied in Potlatch Oil & Refining Co. v. Ohio Oil Co., 199 F 2d 766, 770; Bond v. Birk, 126 M 250, 247 P 2d 199, 200.

93-2613. (9041) Actions for relief not hereinbefore provided for.

References

Cited or applied in Bond v. Birk, 126 M 250, 247 P 2d 199, 200.

CHAPTER 27—TIME OF COMMENCEMENT OF ACTIONS—GENERAL PROVISIONS CONCERNING

93-2702. (9048) Exception, where defendant is out of the state.

Application

This section does not toll the running of a statute of limitation in an action against a foreign corporation which was suspended from operating in the state for non-payment of taxes, since the person could get service of process on such corporation through the secretary of state in accordance with sections 93-3007 and 93-3011 and a personal judgment could be entered on such service. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325.

93-2704. (9050) Provision where person entitled dies, etc.

Operation and Effect

Where accident, in which defendant was driving, occurred November 26, 1941 and defendant died within three years thereof and letters of administration for his estate were issued December 13, 1944, and an action for tort against the defendant was instituted December 11, 1945 within one year after the issuing of letters testamentary, the action was timely under this section. Kujich v. Lillie, 127 M 125, 260 P 2d 383, 385.

References

Cited or applied in Kujich v. Lillie, 127 M 125, 260 P 2d 383, 385.

93-2716. (9062) Acknowledgment and part payment.

References

Cited or applied in Potlatch Oil & Refining Co. v. Ohio Oil Co., 96 F Supp 685, 688.

CHAPTER 28—PARTIES TO CIVIL ACTIONS

93-2801. (9067) Action to be in name of party in interest.

Stockholder of Corporation

Single stockholder has no authority to bring action to quiet title where he alleges that corporation "is the sole and exclusive owner in fee simple title of the lands." Noble v. Farmers' Union Trading Co., 123 M 518, 216 P 2d 925.

Sole or majority stockholders of a corporation cannot maintain an action for the corporation. The reason is, that because the majority stockholders control the corporate machinery, they necessarily control the corporation and through its officers and directors the defense and the prosecution of any litigation involving the corporation. The sole or majority stockholders then have no need to resort to the indirection of a stockholders' suit by grace

of a court of equity to protect the corporate interests. Equity will deny them any such relief, if asked, because their remedy within the corporation is adequate. Malcom v. Stondall Land & Investment Co., — M —, 284 P 2d 258, 260.

As a general rule stockholders may not sue upon a cause of action belonging to their corporation whether in their own names or in the name of the corporation itself. Nor generally may they defend for it an action brought against the corporation as defendant. Malcom v. Stondall Land & Investment Co., — M —, 284 P 2d 258, 260.

References

Cited or applied in Cormier v. Fraser, — M —, 296 P 2d 1021, 1022.

93-2805. (9071) Infant, etc., to appear by guardian.

Sale by Administrator

Fact that no attorneys were appointed to represent minors in proceeding for sale of real estate by administrator of estate did not affect the validity of the proceedings under section 91-4316. Haugan v. Yale Oil Corp., 124 M 1, 217 P 2d 1084, 1087.

93-2810. (9076) When representative may sue for death, etc.

Contributory Negligence

Contributory negligence of a beneficiary is a bar to an action for death brought by or for such beneficiary. Hence, in an action against the United States for negligence in not providing proper ventilation in a parachute room, and failing to provide respirators so that the plaintiff's wife became ill from the inhalation of fumes and died, the plaintiff could not recover because he and his deceased wife were guilty of contributory negligence by using open containers of carbon tetrachloride and assumed the risk of inhaling the fumes. Sartori v. U. S., 186 F 2d 679, 680, 682.

References

Cited in State v. Lawrence, 122 M 277, 201 P 2d 756.

Proof to establish or negative self-defense in civil action for death from intentional act. 17 ALR 2d 597.

Conflict of laws as to survival or revival of wrongful death actions against estate or personal representative of wrongdoer. 17 ALR 2d 690.

93-2811. (9077) Who may be joined as plaintiffs.

Appealability of order with respect to motion for joinder of additional parties. 16 ALR 2d 1023.

93-2812. (9078) Who may be joined as defendants.

Corporation as necessary or proper party defendant in proceedings to determine validity of election or appointment of corporate director or officer. 21 ALR 2d 1048.

93-2824. (9086) Action—when not to abate by death, etc.

Criminal Prosecution

Though a civil action does not abate by the death of a party if the cause of action survive, in a criminal prosecution the death of the convicted person abates the appeal. State v. Lawrence, 122 M 277, 201 P 2d 756.

93-2825. (9087) Another person may be substituted for the defendant, etc.

Appealability of order granting or denying substitution of parties. 16 ALR 2d 1057.

93-2826. (9088) Intervention—when it takes place and how made.

Interest in the Matter in Litigation

Where a taxpayer, under proper procedure, filed an action against the county for a refund of taxes, the state and the state board of equalization have an interest in the subject-matter of the litigation so as to enable them to intervene in the action, not only because part of the tax collected was a state levy but also because the determinative questions raised are of vital interest and concern as they pertain to the tax laws, the procedure thereto, and the public fiscal policy of the sovereign state. Carlson v. Flathead County, — M —, 293 P 2d 273, 275. (Dissenting opinion, — M —, 293 P 2d 273, 276.)

93-2828. (9090) When other parties must be brought in.

Operation and Effect

Where wife asks court to partition various parcels of real property in which she and her husband have an interest it is necessary that interested or affected persons be made parties. Emery v. Emery, 122 M 201, 200 P 2d 251, 265.

CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

93-2901. (9093) Certain actions to be tried, etc.

Construction

The phrase "subject of the action" as used in subdivision 1 is not synonymous with the term "cause of action" nor with the term "object of the action." Subject of the action denotes the plaintiff's principal primary right to enforce or maintain that for which the action is brought and does not denote the specific thing in regard to which the legal controversy is carried on. Fraser v. Clark, 128 M 160, 273 P 2d 105, 115. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

93-2904. (9096) Other actions, according to the residence of the parties.

Actions for Divorce

This section determines the place of trial of divorce actions unless the court has the power to declare otherwise. McNeill v. McNeill, 122 M 413, 205 P 2d 510, 511.

Actions in Tort

Action brought two years after dissolution of partnership for damages resulting from false representations, a paragraph of the complaint alleging that defendant purchased a house with part of the partnership funds and that plaintiff was entitled to one-half the profits received on its sale, was for damages and at law and the proper venue of the county was in the county where the tort was committed. Brownback v. Nelson, 122 M 525, 206 P 2d 1017, 1020.

Actions on Contract

The provisions of the second sentence of this section insofar as it relates to actions upon contracts is in the nature of an exception to the general rule enacted in the main clause of the first sentence which provides generally that actions be tried in the county of the defendant's residence. Fraser v. Clark, 128 M 160, 273 P 2d 105, 119. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

Early decisions uniformly held that in actions upon contracts the second sentence of this section applied only to actions upon express contracts wherein the contract sued upon discloses on its face that it was to be performed in a particular county other than that of defendant's residence. Later cases departed from the earlier decisions and held that the performance exception applies to a contract which failed to state or provide for any place where such contract was to be performed. The case of State ex rel. Interstate Lumber Co. v. District Court, 54 M 602, 172 P 1030 went further and expressly overruled the earlier cases. The construction given in the Interstate Lumber Co. case and the overruling of the earlier decisions by the case are expressly disapproved. Fraser v. Clark, 128 M 160, 273 P 2d 105, 119. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

Charge of Allegations in Subsequent Complaint

Where plaintiff in first complaint for damages alleged that false representations were made in one county, he was not precluded from alleging that the false representations were made in another county in a subsequent complaint since the representation may have been made in both places. Brownback v. Nelson, 122 M 525, 206 P 2d 1017, 1020.

Construction

The general rule is that actions should be tried in the county in which the defendants reside at the commencement of the action. This is embodied in the first clause of the first section and the four subordinate clauses in that sentence provide alternatives which are departures from the general rule which are allowed under the circumstances set forth in the subordinate clauses. Fraser v. Clark, 128 M 160, 273 P 2d 105, 117. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

References

Cited in State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 848; Kujich v. Lillie, 127 M 125, 260 P 2d 383, 388.

93-2905. (9097) Actions may be tried in any county, unless, etc.

When Change Required

Where divorce action was not brought in county of defendant's residence and defendant appeared by general demurrer, accompanied by written motion for change of venue, affidavit of merits and demand that the action be transferred to the county of his residence, the motion should have been granted. McNeill v. McNeill, 122 M 413, 205 P 2d 510.

References

Cited in State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 848.

93-2906. (9098) Place of trial may be changed in certain cases.

Operation and Effect

This section and section 93-901 are companion sections and must be construed together. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

This section cannot become applicable until the district judge has complied with section 93-901. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

Power of Substituted Judge

Subdivision 4 of this section and section 93-310 give a judge called in under the provisions of section 93-901 the authority to draw additional jurors from jury box No. 3 for the remainder of the term under the provisions of section 93-1510. State v. Hay, 120 M 573, 194 P 2d 232, 234.

Time for Making Decision

Until defendant has answered, any action of the court in determining a motion for a change of venue under subd. 3 is premature. McNeill v. McNeill, 122 M 413, 205 P 2d 510, 512.

Where divorce action was not brought in the county of the residence of the defendant and defendant appeared by general demurrer and demand that the action be transferred to the county of his residence, it was error for the court to refuse the transfer since the court could not be given such authority to retain jurisdiction in such county by subd. 3 of this section prior to the disposition of the demurrer and the answer of defendant. McNeill v. McNeill, 122 M 413, 205 P 2d 510, 511.

References

Cited in State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 848.

93-2908. (9100) Papers to be transmitted—costs and fees—jurisdiction.

References

Cited or applied in Fraser v. Clark, 128 M 160, 273 P 2d 105, 114.

CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS —SERVICE OF SUMMONS

Section 93-3008. Service of summons on certain corporations—made on secretary of state.
93-3010. Duty of secretary of state.

93-3001. (9105) Actions—how commenced.

References

Cited or applied in Wilson v. Wilson, — M —, 278 P 2d 219, 223.

93-3002. (9106) Complaint—how indorsed, etc.

References

Cited or applied in Kujich v. Lillie, 127 M 125, 260 P 2d 383, 385.

93-3004. (9108) Alias summons—manner and time of issuing.

References

Cited or applied in Kujich v. Lillie, 127 M 125, 260 P 2d 383, 388.

93-3005. (9109) **Notice of the pendency of an action, etc.**

References

Cited or applied in Emery v. Emery, 122 M 201, 200 P 2d 251, 265.

93-3007. (9111) **Summons—how served.**

References

Cited in Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325, 328; Bentley v. Rosebud County, 230 F 2d 1.

93-3008. (9112) **Service of summons on certain corporations—made on secretary of state.** When an action is pending in any court in this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in this state; or against a corporation organized under the laws of any other state or country that is actually doing business within the state of Montana or that was actually doing business within this state at the time the said action arose even though such corporation has not filed a copy of its charter in the office of the secretary of state of Montana and has not qualified to do business in this state; or against a national banking corporation who, through insolvency or lapse of charter has ceased to do business in Montana; upon any cause of action arising within this state, and the president or other head, secretary, cashier, or managing agent of such domestic corporation, or the business agent, cashier, secretary, or agent appointed to receive service of process by such corporation organized under the laws of any other state or country, or any clerk, superintendent, general agent, cashier, principal director, ticket agent, stationkeeper, managing agent, or other agent, having the management, direction, or control of any property of any corporation doing business in this state, cannot be found, upon which service of process can be made, and an affidavit is filed in the office of the clerk of the court in which the action is pending, setting forth that an action is pending in that court, and that the plaintiff has a good cause of action upon the merits, and that such corporation is a necessary party therein, and that none of the persons or officers above named can be found within the state, upon whom service of process can be made, the clerk of the court shall make an order directing process to be served upon the secretary of state of the state of Montana, or, in his absence from his office, upon the deputy secretary of state of the state of Montana; provided, however, that when service of process is made under the provisions of this section in actions and proceedings in which personal service of summons is not required to be made in order to obtain relief, including every action or proceeding commenced in this state to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance, or lien, or cloud, upon the title of real or personal property within this state, service by publication must also be made.

History: En. Sec. 1, Ch. 22, L. 1915; amd. Sec. 1, Ch. 37, L. 1917; re-en. Sec. 9112, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1949; amd. Sec. 1, Ch. 122, L. 1951.

Amendments

The 1949 amendment inserted the words "or against a national banking corporation who, through insolvency or lapse of charter has ceased to do business in Montana."

The 1951 amendment inserted the words appearing between the first and second semi-colons relating to corporations not having qualified to do business in the state and added the proviso.

Repealing Clause

Section 2 of Ch. 135, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 135, L. 1949 provided the act should be in effect upon its passage and approval. Approved March 1, 1949.

Doing Business within State

Corporation, which manufactured automobiles and had its principal place of business in Ohio was not doing business within the state for purposes of service of process where it was shown that the corporation had no agents or property in the state, and that it sold its automobiles and parts to distributors in Ohio who in turn sold them to dealers. Representatives from the corporation visited distributors and dealers but their business was to note and report the manner in which the distributors and dealers conduct the business. Clapper Motor Co. v. Robinson Motor Co., 119 F Supp 79.

Sufficiency of Affidavit

Affidavit that affiant was unable to locate "the President, Vice President, Cashier or other officer of the said defendants upon whom service could be made, and that there is no such agent or officer of said corporation in the State of Montana upon whom service could be had" was in substantial compliance with the requirements of the statute. Hinton v. Staunton, 124 M 534, 228 P 2d 461, 465.

References

Cited or applied in Malcom v. Stondall Land & Investment Co., — M —, 284 P 2d 258, 259.

Who is "agent authorized by appointment" to receive service of process within purview of Federal Rules of Civil Procedure and similar state rules and statutes. 26 ALR 2d 1086.

93-3010. (9114) **Duty of secretary of state.** Upon such service being so made upon the secretary of state or his deputy, the said secretary of state or his deputy shall promptly mail the copy of summons and complaint, and copy of the order, by registered mail to the address of such corporation, at its principal home office, as shown by the papers on file in the office of the secretary of state, and in the case of corporations which have not qualified to do business within the state, to the principal home office address as supplied by the plaintiff in said action, and shall make out and mail to the clerk of the court in which the action is pending, a certificate of such mailing, which shall have attached thereto the registry receipt for such letter.

History: En. Sec. 3, Ch. 37, L. 1917; reen. Sec. 9114, R. C. M. 1921; amd. Sec. 2, Ch. 122, L. 1951; amd. Sec. 1, Ch. 151, L. 1953.

Amendments

The 1951 amendment inserted the words "And in the case of corporations which have not qualified to do business within the state, to the principal home office address as supplied by the plaintiff in said action" and added the proviso.

The 1953 amendment deleted the proviso at the end of the section which read "provided that in cases of corporations which have not qualified to do business within this state service shall not be deemed complete unless the registry receipt shows prima facie that each copy of summons and complaint and copy of the order was received."

Repealing Clauses

Section 3 of Ch. 122, Laws 1951 and Sec. 2 of Ch. 151, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 4 of Ch. 122, Laws 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Section 3 of Ch. 151, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

93-3011. (9115) **Service to be deemed personal.**

Operation and Effect

It is competent for the legislature to provide that service on the secretary of state shall constitute personal service on

the corporation. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325, 328.

In the Rothrock Case the court distinguished between substituted service and constructive service. Personal service of process means delivery to the defendant personally. But even in the case of individuals, it is competent for the legislature to give other modes of service the force of personal service. Since a corporation is but an artificial being, it is proper for the legislature to prescribe what shall constitute personal service on such a being and it is competent for the legislature to provide that service on the secretary of state shall constitute personal service on the corporation. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325, 328.

Personal Judgment

As this section deems service on the secretary of state under section 93-3007 personal service it follows that a personal judgment may be entered on such service. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325, 328.

93-3013. (9117) Publication of summons.

Affidavit Made by Attorney

There is nothing in this section which prevents plaintiff's attorney from either making or filing the affidavit. Clinton v. Miller, 124 M 463, 226 P 2d 487, 494.

Applicable to Quiet Title Action

This section is made applicable to quiet title actions by section 93-6202. Clinton v. Miller, 124 M 463, 226 P 2d 487, 495.

Filing Summons and Return Not Condition Precedent

There is no provision which requires that the original summons with the return thereon must first be filed with the clerk of the court before an order of publication may be obtained. Clinton v. Miller, 124 M 463, 226 P 2d 487, 495.

Specific Performance

A suit for specific performance of a contract to convey real property is a suit in personam and service cannot be had by publication. State ex rel. Miller v. District Court, 120 M 423, 186 P 2d 506, 507, 173 ALR 978.

Sufficiency of affidavit as to due diligence in attempting to learn whereabouts of party to litigation, for the purpose of obtaining service by publication. 21 ALR 2d 929.

93-3019. (9123) When jurisdiction of action acquired.

References

Cited or applied in Kujich v. Lillie, 127 M 125, 260 P 2d 383, 388.

93-3020. (9124) Return of summons.

Failure to File Original Summons With Return

Mere failure or omission to file the original summons with the various returns thereon within the time specified in this section does not affect the district court's jurisdiction. Clinton v. Miller, 124 M 463, 226 P 2d 487, 496.

Failure to Make Return in Time

The court does not lose jurisdiction over a defendant who has been properly served by the failure of the sheriff to make the return within the time required by this section. Clinton v. Miller, 124 M 463, 226 P 2d 487, 496.

CHAPTER 31—PLEADINGS IN GENERAL

93-3103. (9127) What pleadings are allowed.

Operation and Effect

Where a motion for a change of venue was timely served and filed in the action by defendant's attorney, defendant was not in default. McLeod v. McLeod, 124 M 590, 228 P 2d 965.

CHAPTER 32—THE COMPLAINT—JOINDER OF ACTIONS

93-3201. (9128) Complaint first pleading.

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999.

93-3202. (9129) Complaint—what to contain.

Divorce Action

In a divorce action a complaint charging desertion must be sufficiently informative as to matters of time and place of desertion as to reasonably inform the defendant of the charge. Hosking v. Hosking, 120 M 437, 186 P 2d 503, 504.

"Last Clear Chance Doctrine"

The doctrine of last clear chance has application to a case not only where defendant actually saw plaintiff in a position of peril in time to avoid the injury by the exercise of reasonable care but also to a case where in the exercise of reasonable care he should or could have discovered plaintiff in his perilous position in time to avoid the injury. Sorrells v. Ryan, — M —, 281 P 2d 1028, 1030.

Legal Conclusions

Statement that the defendant "wrongfully failed to perform his official duty to supply the plaintiff with license blanks" in a suit for damages against the state fish and game warden was a bald conclusion of law and insufficient to withstand general demurrer. Meinecke v. McFarland, 122 M 515, 206 P 2d 1012, 1014.

Pleadings in Actions on Bills and Notes

It is a fundamental rule of pleading in actions on bills and notes that the plaintiff must allege facts showing title or right to sue. In an action by the payee named in the instrument, however, a formal allegation that he is still the owner and holder is unnecessary if the execution of the instrument, its delivery to the plaintiff, and the default of the maker or acceptor are alleged. Parkinson v. Diefenderfer, — M —, 280 P 2d 424.

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999; Shuey v. Shuey, — M —, 290 P 2d 1100, 1102.

93-3203. (9130) What causes of action may be joined.

Divorce

Relief for causes set out in subds. 1, 2, 3 and 4 of this section cannot be joined in an action for a divorce. Emery v. Emery, 122 M 201, 200 P 2d 251, 256.

Failure to Object Waives Right

Where plaintiff failed to move the court to require the defendant to separately state and number causes of action, the objection to the intermingling of separate causes of action was waived. Pioneer Engineering Works v. McConnell, 123 M 171, 212 P 2d 641.

Trespass

Where plaintiff is grazing cattle of several other persons on his lands and defendant on two separate occasions commits a trespass against such cattle the causes of action may be joined. Cormier v. Fraser, — M —, 296 P 2d 1021.

References

Cited or applied in Maass v. Patterson, 122 M 394, 204 P 2d 1040, 1041; Shaw v. Shaw, 122 M 593, 208 P 2d 514, 519; Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 995.

CHAPTER 33—DEMURRER TO COMPLAINTS

93-3301. (9131) When defendant may demur.

Facts Sufficient to Constitute a Cause of Action

As actionable negligence arises only from a breach of a legal duty, and a complaint alleged that the defendant owed plaintiff, his employee, the duty of furnishing him a reasonably safe place to work and alleged a breach of the duty by alleging that the defendant failed to provide a reasonably safe place to work and a reasonably safe way to travel to and from a water fountain and rest room, the complaint stated facts sufficient to constitute a cause of action and was good as against the demurrer. Ritchie v. Northern Pac. Ry. Co., 128 M 218, 272 P 2d 728, 729.

Forcible Entry and Unlawful Detainer Actions

The provisions of this chapter, sections 93-3301 to 93-3306, are made applicable to proceedings for forcible entry and unlawful detainer by section 93-9718, since they are encompassed by and included within sections 93-2301 to 93-8717 as specified in section 93-9718. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999.

Waiver of Defects

Where defendants filed a demurrer they thereby waived all defects in the complaint attackable only by motion and therefore motion for bill of particulars was properly overruled. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 603.

References

Cited or applied in State ex rel. Cornwell v. District Court, 122 M 266, 200 P 2d 706, 709; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 504; State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 550.

Demurrer as setting up defense of bona fide purchase of real property. 33 ALR 2d 1330.

93-3302. (9132) Demurrer must specify, etc.

References

Cited or applied in Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 504.

93-3306. (9136) Objections—when deemed waived.

References

Cited or applied in Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 504.

CHAPTER 34—ANSWER

93-3401. (9137) Answer—what to contain.

Denial of Material Allegations

Where answer denied each and every "material" allegation of the complaint and plaintiff went to trial thereon without objection, each and all allegations in the complaint were material and the plaintiff was required to make proof of such material allegations so pleaded by him. Maass v. Patterson, 122 M 394, 204 P 2d 1040, 1045.

Forcible Entry and Unlawful Detainer Actions

The provisions of this chapter, sections 93-3401 to 93-3415, are made applicable to proceedings for forcible entry and unlawful detainer by section 93-9718, since they are encompassed by and included within sections 93-2301 to 93-8717 as specified in section 93-9718. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999.

Offer to do Equity

An "offer to do equity" in the answer when not accepted as provided in section 93-8201 could not be used in evidence nor could it be regarded as an admission that defendants had waived any of their defenses. Rachou v. McQuitty, 125 M 1, 229 P 2d 965.

Waiver of Objections

Objections to the form of denials are waived by going to trial without first challenging the pleading by motion, demurrer or other timely and proper objection. Maass v. Patterson, 122 M 394, 204 P 2d 1040, 1045.

References

Cited in Flathead Lumber Corp. v. Everett, 127 M 310, 263 P 2d 376, 381 (dissenting opinion).

93-3411. (9147) Partial defenses.

Burden of Proof

Matter in mitigation of damages is a defense and the burden of pleading and proving it rests with the defendant. Garden City Floral Co. v. Hunt, 126 M 537, 255 P 2d 352, 358.

Mitigation of Damages

Matter in mitigation of damages is a defense, and the burden of pleading and proving it rests with the defendant. Garden City Floral Co. v. Hunt, 126 M 537, 255 P 2d 352, 358.

93-3415. (9151) Cross-complaint—filing—service.

Cross-complaint Proper in Forcible Entry and Unlawful Detainer Actions

This section, included in the Code of Civil Procedure, is made applicable to proceedings for forcible entry and unlawful detainer by sections 93-9707 and 93-9718. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 995, 998, 999.

Scope of Cross-complaint in Mandamus Proceedings

Interveners in a mandamus action are not entitled to maintain their cross-complaint unless that cross-complaint relates to, or depends upon, the duties asserted by the plaintiff against the defendant public officer. Thus, where the plaintiff seeks by mandamus to require the recorder of marks and brands to record a brand in his name as administrator whether the interveners are the owners of the brand, the animals bearing the brand, and of the proceeds of the sale of animals so branded presents a question which bears no rela-

tion to the duty of the general recorder of marks and brands to issue a certificate to the plaintiff. Benolken v. Miracle, — M —, 289 P 2d 953, 955.

Interveners by their cross-complaint may not transform a proceeding in mandamus against a public officer into a private dispute between them and the plaintiff to settle disputed property rights which do not relate to, or depend upon, the duty of the officer against whom the proceeding is brought. Benolken v. Miracle, — M —, 289 P 2d 953, 956.

CHAPTER 36—REPLY

93-3601. (9158) What reply to contain—time for filing.

Function of Reply—When Allegations Constitute Departure From Complaint

In action for specific performance of contract for assignment of leases in which defense was impossibility of performance because leases had been terminated when defendant entered into contract with owner of land for purchase, a reply admitting such termination of the leases and praying for the assignment of such contracts of purchase was an abandonment of the original cause of action and sought to enforce a different contract and therefore could not be the basis for any recovery. Rachou v. McQuitty, 125 M 1, 229 P 2d 965.

References

Cited in Flathead Lumber Corp. v. Everett, 127 M 310, 263 P 2d 376, 381 (dissenting opinion).

93-3603. (9160) Failure to reply.

References

Quoted in the dissenting opinion in Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 382.

CHAPTER 37—VERIFICATION OF PLEADINGS

93-3702. (9163) Verification of pleadings.

References

Cited or applied in State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024, Clinton v. Miller, 124 M 463, 226 P 2d 487, 494.

CHAPTER 38—GENERAL RULES OF PLEADING

Section 93-3820. Adoption by reference of statements in a pleading.

93-3801. (9164) Pleadings to be liberally construed.

Divorce Action

A complaint in a divorce action which does not set forth the elements of the ground for divorce with sufficient certainty to establish them is not aided by this section. Hosking v. Hosking, 120 M 437, 186 P 2d 503, 504.

Relief Requested

In divorce action where complaint alleged that $2,040 which had been in bank was plaintiff's separate property, that it was placed in her name although she had no interest in it and that she took the money without plaintiff's consent and prayer was for "such other and further relief as to the court may seem meet and equitable in the premises," it was not error for the court to adjudge that plaintiff recover from defendant the amount of $2,040. Rogers v. Rogers, 123 M 52, 209 P 2d 998, 1001.

References

Cited or applied in Manning v. Zeiler, 127 M 248, 261 P 2d 807, 808.

93-3804. (9167) Account—how pleaded.

Foreclosure of Mechanic's Lien

In action to forclose mechanic's lien and recover a stated sum of money for labor and materials a complaint which did not contain an itemized statement of the materials and labor furnished was not subject to demurrer, but the defendant's remedy was under this section. Cole v. Hunt, 123 M 256, 211 P 2d 417, 419.

93-3813. (9176) **Answer in such cases.**

Joint liability for slander. 26 ALR 2d 1031.

93-3814. (9177) **Judgment determining rights between codefendants, etc.**

Demand for Relief Necessary

Fact that a court of equity when once it acquires jurisdiction will grant all the relief necessary to the adjustment of the entire subject of the action is subject to the qualification that when rights between defendants are involved it is not proper to make determination thereof unless demanded in the pleadings. Strack v. Federal Land Bank, 124 M 19, 218 P 2d 1052, 1056.

93-3820. Adoption by reference of statements in a pleading. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

History: En. Sec. 1, Ch. 16, L. 1953.

Title of Act

An act relating to pleadings in civil actions, authorizing the adoption by reference of statements in a pleading in other parts thereof.

Repealing Clause

Section 2 of Ch. 16, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 39—VARIANCE—AMENDMENTS—MISTAKES IN PLEADING

93-3901. (9183) **Material variances—how provided for.**

References

Cited or applied in Bennett v. Dodgson, — M —, 284 P 2d 990, 995.

93-3903. (9185) **When not to be deemed a variance—failure of proof.**

References

Cited or applied in Bennett v. Dodgson, — M —, 284 P 2d 990, 995.

93-3905. (9187) **Amendments by the court—enlarging time, etc.**

Amendments by Leave of Court

Affirmative Showing of Abuse of Discretion Must be Made to Reverse Lower Court

The allowance or denial of leave to amend a pleading during the course of a trial is within the sound discretion of the trial court and in the absence of an affirmative showing of abuse of discretion the supreme court will not disturb the order of the trial court. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 378.

Amendments Allowed

To Substitute Real Party in Interest

In action to quiet title, court was authorized, after default of original defendant, to set aside default and permit assignee of timber rights to be substituted as the party defendant. State ex rel. Hilyard v. District Court, 120 M 342, 184 P 2d 997.

When Amendment Properly Refused

After plaintiff had put in his proof and rested his case and defendant introduced some evidence in support of his defense, the court cannot be said to have abused its discretion in refusing an amendment to the answer which would have materially changed the issues. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 378.

Discretion of Court

When a motion to quash is sustained, it is within the discretion of the trial court either to allow an amendment or to give judgment forthwith. State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1016.

Extending Time for Filing Demurrer

Where motion to strike complaint was overruled and court ordered defendant to answer, defendant could, if he felt that the order prejudiced him in not permitting him to demur to the complaint, request the court for permission to file a demurrer under the provisions of this section and if he fails to do so he waives his right to demur. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 376.

Inapplicability Where Party Fails to Present Bill of Exceptions within time Limit

Where a party fails to present his bill of exceptions within the time limit prescribed by section 93-5505, he may not rely upon this section for relief. Nonaction is not the equivalent of a "proceeding taken against" the party and since this section is a general one while sections 93-5505 and 93-8708 are specific and pertain to bills of exceptions, the latter sections control under the well-settled rule of construction in this state that the provisions of a special statute control those of a general statute relating to the same subject-matter. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 992, 994, 995.

Operation and Effect

This court has repeatedly declared that default judgments are not favored and that it is the policy of the law to have every case tried on its merits. While slight abuse of discretion in refusing to set aside a default judgment is sufficient to justify a reversal of the order, only in exceptional cases will this court disturb the action of a trial court in re-opening a default. Waggoner v. Glacier Colony of Hutterites, 127 M 140, 258 P 2d 1162, 1168.

Trial court erred in refusing to set aside a default judgment entered after defendant's failure to answer, where evidence disclosed that defendant after being served with process went to see the plaintiff's lawyer and not finding him in talked with an associate who promised to relay defendant's message to him to the effect that the plaintiff was suing the wrong colony, and there was confusion over what was told to the defendant. Waggoner v. Glacier Colony of Hutterites, 127 M 140, 258 P 2d 1162.

Trial court was correct in setting aside a default judgment against the defendant entered in a divorce decree, where it was disclosed that at the time plaintiff instituted the divorce action in Montana there was pending a divorce action by defendant against plaintiff in California and to which plaintiff had filed a cross-complaint. Petrol v. Petrol, 127 M 184, 259 P 2d 338.

Relief From Judgments, Orders, or Other Proceedings

Amended Application After Motion to Quash Sustained

Where order sustained motion to quash and dismissed action it amounted to a judgment which could be set aside by complying with this section and the provisions of this section can not be avoided by filing an amended application on the theory the order on such amended application for a writ of certiorari is by implication an order to set aside the judgment of dismissal and granting leave to amend. State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1017.

Fraud—Probate Proceedings

This section does not provide for setting aside a judgment because of fraud, and while such relief on such ground may be available in a court of equity it is not obtainable in a court of probate. State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866, 868.

Variance

Where, in action to recover value of use and occupancy, plaintiff claimed damages measured on a certain basis, and defendant denied that it had any rental value, the fact that a different rental value than that alleged in the complaint was proved was not a material variance. Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co., 121 M 1, 190 P 2d 55, 60.

References

Cited or applied in State ex rel. Doyle v. District Court, 126 M 615, 245 P 2d 382; Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 382 (dissenting opinion); Malcom v. Stondall Land & Investment Co., — M —, 284 P 2d 258, 261.

Reliance by employee codefendant on promise or assumption that employer would defend in employee's behalf as ground for vacation of default judgment. 16 ALR 2d 1139.

Setting aside default judgment for failure of statutory agent on whom process was served to notify defendant. 20 ALR 2d 1179.

93-3908. (9190) Suing a party by a fictitious name—when allowed.

Operation and Effect

It is sufficient to describe a party by any known and accepted abbreviation of his Christian name. Clinton v. Miller, 124 M 463, 226 P 2d 487, 497.

93-3909. (9191) No error or defect to be regarded unless, etc.

Excessive Verdict

Where verdict of jury was for ten dollars more than proof showed loss to be and there was no conflict in the evidence, the judgment entered on such verdict would not be reversed but the judgment would be modified by reducing it by ten dollars. Miller v. Emerson, 120 M 380, 186 P 2d 220.

Not Applicable Where Jurisdiction Has Not Been Acquired

This section has no application where jurisdiction is wanting. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 254.

Not Applicable Where Right to Trial by Jury Involved

The provisions of this section are not applicable where the substantial right of the litigants to have a fair trial before an impartial judge is involved. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 254.

Operation in General

Where defendant in divorce action admitted that certain stocks in her name belonged to plaintiff and that she would indorse them and turn them over to plaintiff if produced, any error in the order of the court quieting title to the stock in plaintiff and ordering defendant to transfer and convey the stock to plaintiff was harmless. Rogers v. Rogers, 123 M 52, 209 P 2d 998, 1000.

References

Cited or applied in Koger v. Halverson, 125 M 560, 242 P 2d 273, 275; Flathead Lumber Corp. v. Everett, 127 M 291, 263 P 2d 376, 384 (dissenting opinion).

93-3910. (9192) Time for amendment, answer or reply, etc.

Operation and Effect

Where a motion for a change of venue was timely served and filed in the action by defendant's attorney defendant was not in default. McLeod v. McLeod, 124 M 590, 228 P 2d 965.

CHAPTER 41—CLAIM AND DELIVERY OF PERSONAL PROPERTY

93-4101. (9220) Plaintiff may claim delivery.

References

Cited or applied in Emery v. Emery, 122 M 201, 200 P 2d 251, 266; State ex rel. Olsen v. Sundling, — M —, 281 P 2d 499, 501.

93-4102. (9221) Affidavit and its requisites.

Operation and Effect

In such actions it is incumbent on plaintiff to establish by the preponderance of the evidence the right to the immediate possession in himself at the time the action is brought, and that the defendant is wrongfully in possession. Plaintiff must rely upon the strength of his own right of possession and not upon the weakness of his adversary's claim to such right. O'Connell v. Haggerty, 126 M 442, 253 P 2d 578, 580.

CHAPTER 42—INJUNCTION

93-4201. (9240) Injunction order defined—by whom granted.

Definition—Restraining Order

An order which requires a person to refrain from a particular act for any period of time, no matter what its purpose, is an injunction and this applies to a "restraining order." Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 603.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

Injunctive relief against submission of constitutional amendment, statute, municipal charter, or municipal ordinance, on ground that proposed action would be unconstitutional. 19 ALR 2d 519.

Decree granting or refusing injunction as res judicata in action for damages in relation to matter concerning which injunction was asked in first suit. 26 ALR 2d 446.

93-4202. (9241) Injunction—when allowed.

Continued value of restrictive covenant to dominant owner in protection of his property from competition as basis for its enforcement notwithstanding changes in neighborhood conditions. 2 ALR 2d 601.

Relief against union activities as affected by the fact that owner of business operates without outside help or is doing part of the work. 2 ALR 2d 1196.

Injunction by owner or lessee of oil or gas land, or mineral royalty interest therein, in respect of waste. 4 ALR 2d 201.

Right to injunction against flood protection measures as affected by adequacy of remedy at law. 5 ALR 2d 82.

Capacity of taxpayers to maintain suit to enjoin submission of initiative, referendum or recall measure to voters. 6 ALR 2d 557.

Injunction against breach of contract for will or conveyance of property at death in consideration of support or services. 7 ALR 2d 1178.

Adequacy, as regards right to injunction, of the remedy for review of order fixing public utility rates. 8 ALR 2d 839.

Injunctive relief against breach of contract, other than lease or agreement therefor, or contract for services, terminable by one party but not the other. 8 ALR 2d 1208.

Injunction against use by municipality or public of subsurface of street or highway for purposes other than sewers, pipes, conduits wires, and the like. 11 ALR 2d 189, 196, 203, 211, 214.

Injunction against peaceful picketing as affected by employer's lack of opportunity to negotiate with union or employees. 11 ALR 2d 1069.

Injunction as remedy of tenant against stranger wrongfully interfering with his possession. 12 ALR 2d 1201, 1208.

Remedy of tenant against stranger for interference with passageway. 12 ALR 2d 1233.

Right of third party in area picketed during labor dispute, who has no connection with the dispute, to an injunction against such picketing. 15 ALR 2d 1396.

Injunction against procuring breach of contract. 26 ALR 2d 1275.

Injunction to protect charitable or eleemosynary corporation against use of same or similar name by another corporation. 27 ALR 2d 961.

Injunction as available to tenant upon landlord's breach of covenant to repair. 28 ALR 2d 473.

Injunction to restrain interference with plaintiff in possession of public office. 34 ALR 2d 560.

Injunction against parking vehicles on private way. 37 ALR 2d 944.

Injunction against pollution of subterranean waters. 38 ALR 2d 1277.

Minority stockholders' right to enjoin further or additional issuance of stock. 38 ALR 2d 1366.

93-4203. (9242) Injunction—when not allowed.

Enforcement of Criminal Law

An injunction may not be granted to prevent the enforcement of the criminal law. State ex rel. Olsen v. Horsky, 122 M 547, 206 P 2d 1157.

Enjoining Enforcement of Board Order

Where the industrial accident board issued an order directing a coal mine to erect a washhouse for its employees in compliance with section 50-435, the coal mine cannot obtain an injunction to enjoin enforcement of the order based on facts which they can assert as a defense to any proceeding brought by the board. Jeffries Coal Co. v. Industrial Accident Board, 126 M 411, 252 P 2d 1046, 1047.

Injunction Pendente Lite Regarding Possession of Real Estate

Title or right to possession to real estate may not be litigated in a suit for an injunction. Where there was a lease which was allegedly breached the plaintiff is not entitled to a restraining order preventing the defendants from occupying the land pending a determination of the case on its merits since it was found that the relationship of the parties was one of landlord and tenant and was not a cropping agreement. Davis v. Burton, 126 M 137, 246 P 2d 236.

Operation and Effect

Since a private citizen, who does not show that he will be injured in any property or civil right, cannot invoke equitable congnizance of a purely political question, where plaintiff's complaint, in an action seeking an injunction preventing the secretary of state from certifying nominees for a vacancy in the board of railroad commissioners, shows that his only interest is as a taxpaying, private citizen and prospective absentee voter, he is without standing or capacity to in-

voke equitable cognizance of a purely political question. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 649.

Power to enjoin canvassing votes and declaring result of election. 1 ALR 2d 588.

Injunction by state court against action in court of another state. 6 ALR 2d 896.

Compelling reinstatement to nonpublic office for employment by mandatory injunction prior to hearing of case. 15 ALR 2d 328.

93-4204. (9243) Injunction order—when granted.

Grounds for Injunction

To entitle an applicant to an injunction he must show not only that he is in danger of losing a substantial right but also that he is in no fault. Emery v. Emery, 122 M 201, 200 P 2d 251, 261.

In addition to having a clear right there must also be an apparent and pressing necessity for an injunction, and the injury threatened must be imminent and such as can only be avoided by an injunction. Emery v. Emery, 122 M 201, 200 P 2d 251, 261.

Title to Real Property

A wife may not obtain injunction to restrain her husband from selling property when her title to the property is not clear. Emery v. Emery, 122 M 201, 200 P 2d 251, 265.

Title to or right of possession of real estate is not triable by injunction. Emery v. Emery, 122 M 201, 200 P 2d 251, 267.

Where, in action for injunction, to prevent trespass on land in which plaintiff claimed title to land, defendants in answer claimed title to land involved by adverse possession which plaintiff denied, the pleadings presented the issues of title and ownership which the court had power to determine. Tiffany v. Uhde, 123 M 507, 216 P 2d 375.

93-4205. (9244) Injunction order—at what time granted, etc.

Application of Section

This section has no application to proceedings for the abatement of a nuisance under section 94-1001 et seq. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Sufficiency of Affidavit

Where restraining order is granted on affidavits they must contain a statement of the material facts essential to establish the applicant's right to the relief sought. Emery v. Emery, 122 M 201, 200 P 2d 251, 259.

The requirement that the affidavit should show that sufficient grounds exist for the restraining order is not met by statements of the legal conclusions of the pleader or of mere matters of opinion unsupported by sufficient facts. Emery v. Emery, 122 M 201, 200 P 2d 251, 259.

In affidavit for restraining order to prevent defendant in divorce action from molesting plaintiff or entering their home, it was necessary to state facts showing specific improper acts or conduct. Emery v. Emery, 122 M 201, 200 P 2d 251, 260.

In affidavit for restraining order to restrain withdrawal of bank funds, statement that "the defendant is addicted to spendthrift and profligate habits" is a bare conclusion and where there are no specific acts alleged, it is insufficient. Emery v. Emery, 122 M 201, 200 P 2d 251, 260.

93-4206. (9245) When notice required.

Cross-Reference

See note to sec. 93-4205. Emery v. Emery, 122 M 201, 200 P 2d 251.

93-4207. (9246) Security upon injunction.

Consecutive Restraining Orders

Where bond was executed in connection with granting of temporary restraining order which was thereafter dissolved but on the same day the judge continued the restraint by another restraining order and continued the bond, the sureties on the original bond were liable for damages sustained through the period of restraint imposed by the second order. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 601.

Consideration for Bond

A bond executed pursuant to and in substantial compliance with this section needs no consideration. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 601.

Measure of Damages

The measure of damages in an action on the injunction bond is the amount which will compensate for all the detriment proximately caused by the injunction during the time it is operative, or which in

the ordinary course of things, would be likely to result therefrom. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 601.

Proof of Damages

Where there was evidence as to expenses and attorney's fees in a sum in excess of the amount of the bond, it was error to grant motion for nonsuit but case should have gone to jury. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 601.

Fact that person suing on bond became obligated for attorney's fees in injunction is sufficiently shown by proof that he employed an attorney who procured a dissolution of the injunction and of the reasonable value of his services. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 602.

Voluntary Dismissal—Action on Bond

Where appeal was taken from action dissolving temporary restraining order and thereafter appellant dismissed his appeal, such dismissal constituted a final adjudication that appellant was not entitled to injunction thereby making the sureties liable. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 600.

What May Be Recovered

Under a bond given in accordance with this section, reasonable expenses are recoverable including attorney's fees and costs of procuring the dissolution of the restraint from the time such restraint was imposed to the final determination thereof. Sheridan Elec. Coop. v. Ferguson, 124 M 543, 227 P 2d 597, 602.

References

Cited or applied in Stalcup v. Cameron Ditch Co., — M —, 300 P 2d 511, 513.

93-4211. (9250) Application to dissolve or modify.

When Modification Not Permissible

Where complaint and affidavits showed prima facie that premises constituted a nuisance per se under section 94-1002, it was error to quash the temporary injunction issued thereunder when defendant filed affidavit under this section and before any hearing on the complaint was had. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307.

93-4212. (9251) Dissolution or modification.

Dismissal, discontinuance or nonsuit as nullifying previous temporary injunction. 11 ALR 2d 1411.

93-4213. (9252) Costs may be awarded.

Damages

Where mother brought habeas corpus proceedings to enforce court order awarding custody of child in divorce proceedings she was entitled to damages under the provisions of this section. Benson v. Benson, 121 M 439, 193 P 2d 827, 830.

CHAPTER 43—ATTACHMENT

Section 93-4304. **Undertaking.**

93-4301. (9256) When attachment may issue.

When Attachment Not Authorized

Held, that in a contract for the sale of real property werein there was provided a remedy for and security to the vendors for a breach thereof, this section precluded a rightful attachment and seizure of defendant's personal property. The contract was not one for the direct payment of money and such payments due under the contract were secured by the provisions of the contract. Fraser v. Clark, — M —, 282 P 2d 459, 468.

References

Cited or applied in First Nat. Bank of Plains v. Green Mt. Soil Conservation District, — M —, 293 P 2d 289, 291.

93-4302. (9257) Affidavit—what to contain.

Security for Note

Held, a chattel mortgage, which by its terms stated that it was to be security for future advances, was security for a later loan so that attachment was not available in an action for default of a later loan. The chattel mortgage was plain and unambiguous and needed no construction so that parol evidence which tended to vary or alter the terms of the written mortgage

was required to be disregarded. First Nat. Bank of Plains v. Green Mt. Soil Conservation District, — M —, 293 P 2d 289.

References

Cited or applied in Fraser v. Clark, — M —, 282 P 2d 459, 466.

93-4304. (9259) **Undertaking.** Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with two [2] or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars ($1,000.00) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand dollars ($1,000.00), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of ten thousand dollars ($10,000.00). The condition of such undertaking shall be to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. At any time within thirty (30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) days nor more than ten (10) days, must justify before a judge of the district court, or before the clerk thereof, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment.

History: Ap. p. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C, 1907; re-en. Sec. 9259, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1951. Cal. C. Civ. Proc. Sec. 539.

Amendment

The 1951 amendment substituted the words "At any time within thirty (30) days after the service of summons," at the beginning of the third sentence for "Within five days after service of the summons in the action," and in the fifth sentence substituted "ten days" for "five days."

Repealing Clause

Section 2 of Ch. 15, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 15, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

93-4306. (9261) **Property subject to attachment.**

Liquor License

A retail liquor license is subject to attachment. Stallinger v. Goss, 121 M 437, 193 P 2d 810.

Attachment in action on note or bond not resulting in sale of mortgaged property, as precluding foreclosure of real estate mortgage. 37 ALR 2d 960.

What constitutes a fraudulently contracted debt or fraudulently incurred liability obligation within purview of statute authorizing attachment on such grounds. 39 ALR 2d 1265.

93-4320. (9273) **Property claimed by third persons.**

References

Cited in Letz v. Letz, 123 M 494, 215 P 2d 534.

93-4323. (9276) If plaintiff obtains judgment, how satisfied.

Operation and Effect

Held, that where the sheriff of one county held the property in question under a valid writ of attachment and the judgment was rendered and writ of execution directed to the sheriff of another county, that the sale of property by the sheriff of the former county to satisfy the judgment rendered in the latter county was proper. Stokke v. Graham, — M —, 281 P 2d 1025, 1027.

93-4327. (9280) Proceedings to release attachment—before whom taken.

References

Cited or applied in Fraser v. Clark, — M —, 282 P 2d 459, 466.

93-4328. (9281) Attachment—in what cases it may be released, etc.

Appealable Order

Fact that motion was to vacate or release attachment rather than to dissolve the attachment would not prevent the order from being appealable. Stallinger v. Goss, 121 M 437, 193 P 2d 810.

93-4329. (9282) When a motion to discharge attachment may be made, etc.

References

Cited or applied in Fraser v. Clark, — M —, 282 P 2d 459, 466.

93-4331. (9284) When writ must be discharged.

Application

A writ of attachment based upon a fatally defective or erroneous affidavit is improper and irregular. Such writ will be dissolved or discharged when the affidavit on which it is issued states that the obligation is unsecured whereas it is in fact secured. First Nat. Bank of Plains v. Green Mt. Soil Conservation District, — M —, 293 P 2d 289, 292.

CHAPTER 44—RECEIVERS

93-4401. (9301) Appointment of receiver.

Subd. 1.

No Right to Receiver When Action is Based on Sister State Judgment Debt

In the state of Washington, the plaintiff had a joint interest in the house trailer, but when the divorce decree was rendered, her interest was merged in the Washington decree and judgment. In a suit in Montana, the suit is on the debt created by the judgment, and for the collection of a judgment debt the relief by receiver does not lie. Little v. Little, 125 M 278, 234 P 2d 832, 835.

Appointment of receiver in proceedings arising out of dissolution of partnership or joint adventure, otherwise than by death of partner or at instance of creditor. 23 ALR 2d 583.

CHAPTER 45—DEPOSIT OF MONEY OR PROPERTY IN COURT—ENFORCING ORDER TO CONVEY

93-4501. (9308) Deposit in court.

Tender of Payment of Judgment Refused

Where tender in payment of judgment was refused, payment could not be made by deposit in court. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 632.

CHAPTER 47—JUDGMENTS IN GENERAL

93-4701. (9313) Judgment defined.

Dismissal of Action

In proceeding for writ of certiorari an order sustaining a motion to quash and dismissing the proceeding was a judgment.

State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1016.

Order for an Accounting

An order for an accounting is not a judgment since it is not a final determination of the rights of the parties. It is not final, but is a necessary step to determine what if anything the plaintiff has coming from the defendant. Corcoran v. Fousek, 126 M 223, 233 P 2d 1040, 1041.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 586, 256 P 2d 546, 551 (dissenting opinion).

Entry of final judgment after disagreement of jury. 31 ALR 2d 985.

Conclusiveness of judgment of dismissal in bastardy proceedings. 37 ALR 2d 840.

93-4704. (9316) Relief to be awarded to plaintiff.

When Court May Exceed Prayer

In divorce action it was not error for court to adjudge that plaintiff recover from defendant the amount of $2,040 which she had withdrawn from the bank although such relief was not requested in the prayer where the prayer asked "for such other and further relief as to the court may seem meet and equitable in the premise." Rogers v. Rogers, 123 M 52, 209 P 2d 998, 1001.

93-4705. (9317) Action may be dismissed or nonsuit entered.

Operation and Effect

Where actions were commenced and the summons in each case was issued and served within the period and time limit fixed and allowed by express statutes, the trial court has no "discretion" to disregard the rules of practice and procedure so prescribed and attempt to shorten the time so allowed for the performance of the acts of which the defendant complains. Kujich v. Lillie, 127 M 125, 260 P 2d 383, 389.

References

Cited or applied in Schuster v. Northern Co., 127 M 39, 257 P 2d 249, 252.

93-4708. (9320) Effect of judgment dismissing complaint.

Dismissal with Prejudice

A judgment of dismissal may be said to be on the merits when, after plaintiff has lost the right to a dismissal without prejudice because of the filing of a counterclaim, it appears that at the time set for trial he cannot make a case in support of his complaint, and not only fails and refuses to proceed with the presentation of his case but participates in the trial upon defendant's counterclaim. Schuster v. Northern Co., 127 M 39, 257 P 2d 249, 253.

Whether a judgment of dismissal is upon the merits largely depends upon the facts and circumstances of the particular case. Schuster v. Northern Co., 127 M 39, 257 P 2d 249, 253.

References

Cited or applied in State ex rel. Walker v. Board of Comrs, 120 M 413, 187 P 2d 1013, 1017.

CHAPTER 48—JUDGMENT BY DEFAULT

93-4801. (9322) In what cases judgment by default may be entered.

Default Excused

Where defendant's delay in appearing was caused by the service of an alias summons on father and son for the purpose of curing a defect in the original service on the minor, the default judgment was set aside. Nelson v. Lennon, 122 M 506, 206 P 2d 556.

False allegation of plaintiff's domicil for residence in the state as ground for vacation of default decree of divorce. 6 ALR 2d 596.

Granting relief not specifically demanded in pleading or notice in rendering default judgment in divorce or separation action. 11 ALR 2d 340.

CHAPTER 49—ISSUES—MODE OF TRIAL AND POSTPONEMENT—PROCEDURE TO PROCURE JURY TRIAL

Section 93-4905. Issues of fact—how tried—when issues both of law and fact, the former to be first disposed of.

93-4903. (9325) **Issue of law—how tried.**

References

Cited or applied in Granier v. Chagnon, 122 M 327, 203 P 2d 982.

93-4904. (9326) **Issue of fact—how raised.**

No Answer Filed—Effect

Where, in proceeding for writ of possession to enforce judgment in quiet title action, no answer had been filed, there were no pleadings before the court raising any issue of fact which could be tried by a jury. Fuller v. Gibbs, 122 M 177, 199 P 2d 851, 854.

93-4905. (9327) **Issues of fact—how tried—when issues both of law and fact, the former to be first disposed of.** In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this code. Where in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the court, subject to its power to order any such issue to be tried by a jury, or to be referred to a referee, as provided in this code.

History: Ap. p. Sec. 241, p. 98, L. 1877; re-en. Sec. 241, 1st Div. Rev. Stat. 1879; re-en. Sec. 250, 1st Div. Comp. Stat. 1887; en. Sec. 1034, C. Civ. Proc. 1895; re-en. Sec. 6724, Rev. C. 1907; re-en. Sec. 9327, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1939; amd. Sec. 1, Ch. 84, L. 1949. Cal. C. Civ. Proc. Sec. 592.

Amendment

The 1949 amendment omitted provisions relating to pretrial practice.

Repealing Clause

Section 2 of Ch. 84, L. 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 84, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

Pretrial Conference

(The following decisions were decided under the amendment of Ch. 61, L. 1939 and prior to amendment of Ch. 84, L. 1949 which repealed provisions for pretrial conference.)

The permission granted the court to require a pretrial conference does not violate the constitutional guarantee of a jury trial. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

A pretrial conference is not especially for the purpose of disclosure or discovery and the fact that plaintiff furnished defendant with a bill of particulars does not dispense with the reason for a pretrial conference. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 263, 2 ALR 2d 1050.

The district court has power to establish by rule a pretrial calendar, and to make the rule effective it is within the power of the court to provide that no jury case shall be set for trial until pretrial conference thereon is had. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

As used in referring to a court calendar the word "calendar" denotes merely a list of cases to be tried. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

Where rule required pretrial conference before setting jury cases for trial it was not required that the rule contain any definite time for the calling of a jury after the pretrial conference. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 264, 2 ALR 2d 1050.

Where a rule is adopted under the provisions of this section requiring a pretrial conference before a jury trial, such rule is not revoked in a particular case when the judge of the court is disqualified to act. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 260, 2 ALR 2d 1050.

References

Cited or applied in Little v. Little, 127 M 152, 259 P 2d 343, 344; Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1086.

Binding effect of court's order entered after pretrial conference. 22 ALR 2d 599.

93-4912 to 93-4915. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 277, Laws 1947), providing for the calling of a jury on request where a civil action was pending and ready for trial for two years, were repealed by Sec. 2, Ch. 62, Laws 1949. For present provisions, see sec. 93-1501.

CHAPTER 50—TRIAL BY JURY—FORMATION OF JURY—CHALLENGES

Section 93-5011. Challenges for cause.

93-5008. (9341) Ballots—when drawn from box No. 3.

Operation and Effect

This section which requires the jurors drawn from jury box No. 3 to be discharged at the conclusion of the case has no especial connection with section 93-1510 and does not prevent jurors which are drawn under the provisions of such section from being drawn to serve for the remainder of the term. State v. Hay, 120 M 573, 194 P 2d 232, 234.

93-5010. (9343) Challenge.

Allowance of, or refusal to allow, peremptory challenge after acceptance of juror. 3 ALR 2d 499.

Questioning jurors on voir dire regarding liability insurance in personal injury or death action. 4 ALR 2d 792.

93-5011. (9344) **Challenges for cause.** Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by this code to render a person competent as a juror;

2. Consanguinity or affinity within the sixth degree to any party.

3. Standing in the relation of guardian and ward, master and servant, debtor and creditor, employer and clerk, or principal and agent, to either party, or being a memmber of the family of either party, or a partner in business with either party, or surety on any bond or obligation for either party; provided, however, that a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely by reason of current bills of gas, water, electricity or telephone;

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

6. Having an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in the juror evincing enmity against or bias in favor of either party.

History: En. Sec. 134, p. 70, Bannack Stat.; re-en. Sec. 162, p. 164, L. 1867; re-en. Sec. 198, p. 66, Cod. Stat. 1871; re-en. Sec. 249, p. 100, L. 1877; re-en. Sec. 249, 1st Div. Rev. Stat. 1879; re-en. Sec. 258, 1st Div. Comp. Stat. 1887; amd. Sec. 1060, C. Civ. Proc. 1895; re-en. Sec. 6741, Rev. C. 1907; re-en. Sec. 9344, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1953. Cal. C. Civ. Proc. Sec. 602.

Amendment

The 1953 amendment added the proviso in subsection 3.

CHAPTER 51—TRIAL—CONDUCT OF THE TRIAL

93-5101. (9349) Order of trial.

Instructions on Res Ipsa Loquitur

If plaintiff desires the jury instructed on the doctrine of res ipsa loquitur, it was their duty to tender such instruction and request that it be given. Whitney v. Northwest Greyhound Lines, 125 M 528,

242 P 2d 257, 266, 268, 271 (dissenting opinion).

Indoctrination by court of persons summoned for jury service as violating requirement of written instructions. 2 ALR 2d 1104.

Propriety of arguments and remarks by counsel implying that defendant carried liability insurance in personal injury or death action. 4 ALR 2d 786.

93-5102. (9350) View by jury of the premises.

References

Cited or applied in State v. Allison, 122 M 120, 199 P 2d 279, 292.

93-5110. (9358) Verdict—how declared—form of—polling the jury.

Cross-Reference

See note to sec. 93-5111. Fauver v. Wilkoske, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

Validity and effect of verdict of "not guilty." 7 ALR 2d 1341.

93-5111. (9359) Proceedings when verdict is informal.

Improper Verdict—Procedure

After a case has been submitted to the jury and a verdict returned, accepted and filed at the direction of the court and the jury discharged from the case, the only way to reach the verdict, if insufficient or against the law, is by a timely and proper motion for a new trial. Fauver v. Wilkoske, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

Insufficient Verdict

Where the court in its original instruction told the jury it could find but one verdict and the jury returned with a verdict for the plaintiff and also one for the defendant for a lesser amount, the court was correct in sending the jury back for further deliberation and requiring but one verdict. Baranko v. Grenz, 127 M 18, 256 P 2d 1074, 1076.

Judgment Notwithstanding the Verdict

It is not permissible in this state to move for a judgment non obstante veredicto in a law case. Fauver v. Wilkoske, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

References

Cited or applied in Brown v. Grenz, 127 M 49, 257 P 2d 246, 248.

CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—DIRECTED WHEN

93-5201. (9360) General and special verdicts defined.

Coercive effect of verdict urging by judge in civil case. 19 ALR 2d 457.

Validity of verdict in personal injury action which awards damages to plaintiff wife, but either finds against plaintiff husband seeking to recover medical expenses and the like, or awards nothing to him. 36 ALR 2d 1333.

Validity and efficacy of accused's waiver of unanimous verdict. 37 ALR 2d 1136.

93-5203. (9362) Verdict in actions for recovery of money, etc.

Disregard by court of verdict's apportionment among joint tort feasors. 8 ALR 2d 862.

93-5205. (9364) Directed verdict—when.

Motion for Directed Verdict

Where both plaintiff and defendant move the court for a directed verdict, the trial judge becomes the trier of questions both of law and of fact. Granier v. Chagnon, 122 M 327, 203 P 2d 982, 987.

References

Cited or applied in Richardson v. Crone, 127 M 200, 258 P 2d 970, 972.

CHAPTER 53—TRIAL BY THE COURT

93-5301. (9365) **When and how trial by jury may be waived.**

References

Cited or applied in Little v. Little, 127 M 152, 259 P 2d 343, 344.

93-5302. (9366) **Upon trial by court, decision to be in writing, etc.**

Failure to Make Findings—Remand

Where United States district court did not make findings of fact and state conclusions of law before entry of judgment, case was remanded with directions to make such findings of fact and state conclusions of law. Dawson County v. Hagen, 172 F 2d 387.

References

Cited in footnote 9 in 8 F. R. D. 275.

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086.

93-5303. (9367) **Facts found and conclusions of law, etc.**

Cross-Reference

See annotation to sec. 93-5302. Dawson County v. Hagen, 172 F 2d 387.

References

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086.

93-5305. (9369) **Want of findings—judgment not reversed.**

When Findings Not Necessary

Where case is submitted to court without a jury and the evidence justifies but one conclusion, formal findings are unnecessary though request be made for them in conformity with this section. Perry v. Luding, 123 M 570, 217 P 2d 207, 217.

References

Cited or applied in Turnbull v. Brown. 126 M 548, 254 P 2d 1085, 1086; Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 891; Bissell v. Bissell, — M —, 284 P 2d 264, 269.

93-5306. (9370) **Exception for defective findings, etc.**

References

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086.

93-5307. (9371) **Exceptions to be filed and served on opposite party.**

References

Cited or applied in Turnbull v. Brown, 126 M 548, 254 P 2d 1085, 1086; Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 891; Bissell v. Bissell, — M —, 284 P 2d 264, 270.

CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL

Section 93-5505. Exceptions not presented at time of ruling—notice to adverse party, how settled upon, etc.

93-5502. (9387) **What deemed excepted to.**

References

Cited or applied in State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1015.

93-5505. (9390) **Exceptions not presented at time of ruling—notice to adverse party, how settled upon, etc.** Whenever a motion for a new trial is pending, no bill of exceptions need be prepared or settled until the decision of the court upon motion for a new trial has been rendered, but a bill shall be prepared and settled in the same manner and within the

same length of time after the decision on the motion for a new trial as is hereinafter provided for the making and settling of bills of exceptions.

Except as above provided, the party appealing from a final judgment, if he desires to present on appeal the proceedings had at the trial, must, within fifteen (15) days after the entry of judgment if the action was tried with a jury, or after receiving notice of the entry of judgment if the action was tried without a jury, or within such further time as the court or judge thereof may allow, not to exceed sixty (60) days, except upon affidavit showing the necessity for further time, prepare and file with the clerk of the court and serve upon the adverse party a bill of exceptions, containing all of the proceedings had at the trial upon which he relies, in which bill the evidence shall, unless otherwise prescribed by a rule of the supreme court, be stated in narrative form, except that the particular portion of the record showing objections to the admission or rejection of testimony upon which the party preparing the bill expects to rely, shall be set out verbatim.

Within ten (10) days after such service, the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party.

The proposed bill and amendments must, within ten (10) days thereafter, be presented by the party seeking the settlement of the bill to the judge who tried or heard the case, upon five (5) days' notice to the adverse party, or be delivered to the clerk of the court or judge. When received by the clerk, he must immediately deliver them to the judge, if he be in the county; if he be absent from the county, and either party desire the papers to be forwarded to the judge, the clerk must, upon notice in writing of either party, immediately forward them by mail, or other safe channel; if not thus forwarded, the clerk must deliver them to the judge immediately after his return to the county.

When received, the judge must designate the time and place at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated, the judge must settle the bill.

If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten (10) days after service of the amendments, upon notice of five (5) days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with amendments, if any, to the judge or referee, for settlement without notice to the adverse party. It is the duty of the judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the objections may be presented as briefly as possible.

When settled, the bill must be signed by the judge or referee with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

In compensation cases the record certified by the industrial accident board to the district court shall be a part of the judgment roll, and not a part of the bill of exceptions, and the appellant taking an appeal to the supreme court of the state of Montana, shall by praecipe to the clerk of the district court designate such portions only of the judgment roll as the

appellant deems necessary to be certified to the supreme court of the state of Montana. A copy of the praecipe shall be served upon the respondent, and filed with the clerk, and respondent may within ten (10) days after the date of service of the appellant's praecipe, excluding the day of service, likewise by praecipe served upon the appellant and filed with the clerk, designate such portions of the judgment roll which respondent desires to have incorporated in the record on appeal. Only such portions designated by the praecipes need be certified by the clerk as constituting the judgment roll.

History: En. Sec. 1155, C. Civ. Proc. 1895; re-en. Sec. 6788, Rev. C. 1907; amd. Sec. 3, Ch. 225, L. 1921; re-en. Sec. 9390, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1955. Cal. C. Civ. Proc. Sec. 650.

Amendment

The 1955 amendment added the last paragraph.

Repealing Clause

Section 2 of Ch. 85, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Discretion of Court

The court has a wide discretion under this section. Barcus v. Portland Cattle Loan Co., 122 M 534, 207 P 2d 565, 566.

Effect of Failure to Present Bill within Time Limited by Statute

This section has specific application to the time that may be lawfully allowed for the preparation, service, filing and settlement of bills of exceptions. The provisions are mandatory; thus, where the statutory time of fifteen days has elapsed and there has not been an extension of time, the trial court is without power to settle or allow a bill of exceptions. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 991 to 995.

Section 93-3905 pertaining to a court giving relief to a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect does not authorize relief from failure of a litigant to prepare, serve, and file his bill of exceptions within the time fixed by this section as extended by lawful orders of the court made pursuant to timely application by the litigant or his counsel. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 991 to 995.

Effect of Failure to Present Bill within Time Limited by Statute or Extension of Time Granted by Court

Where a defendant served a proposed bill of exceptions after the time prescribed by statute and also after a 60 day extension granted by the court; the court was without jurisdiction to allow defendant's bill of exceptions and a motion to strike the bill of exceptions must be sustained. Kemp v. Murphy, 125 M 234, 233 P 2d 824.

Extension of Time

Where court extends the time and defendant relies on such extension Supreme Court will not deprive the defendant of the benefit of that order after the time for filing and serving the bill of exceptions has expired. Barcus v. Portland Cattle Loan Co., 122 M 534, 207 P 2d 565, 566.

If court erroneously made order extending the time to prepare, serve and file bill of exceptions under this section it had authority to correct such order under the provisions of section 93-8405. Barcus v. Portland Cattle Loan Co., 122 M 534, 207 P 2d 565, 566.

Limitation

It is doubtful whether the legislature intended when it amended this section to still have section 93-8708 operate as a further limitation upon the courts in granting extension of time for a bill of exceptions. State ex rel. Robbins v. Bonner, 128 M 45, 270 P 2d 400, 402.

Operation and Effect

This section and section 93-8708 are special statutes pertaining to the preparation and extension of time for the service and filing of bills of exceptions, and by the well-established rule of construction in this state, control over general statutes. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 995.

Appellant entitled to an extension of time within which to file a bill of exceptions where it was shown that the official court stenographer could not prepare a transcript setting forth the evidence and proceedings. Petition of Butts, 128 M 118, 271 P 2d 424.

Presumption When No Bill of Exceptions

Where record on appeal contains no bill of exceptions but only the judgment roll, the presumption must be indulged that the evidence introduced at the trial supports

the trial court's finding and judgment. Tiffany v. Uhde, 123 M 507, 216 P 2d 375.

Record

On appeal, where the lower court order granting the appellant an extension of time for the filing and serving of a bill of exception showed that it was made upon application and a showing made, the Supreme Court will not presume that the lower court acted in violation of the applicable statute in the absence of a showing to the contrary. Erdmann v. Erdmann, 127 M 252, 261 P 2d 367, 368.

References

Cited in In re Hall's Estate, 124 M 355, 224 P 2d 138, 140, 4 St Rep 148.

Raising defense of statute of frauds by motion to strike testimony after failure to object to parol evidence. 15 ALR 2d 1330.

93-5507. (9392) When exception is refused, etc.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 698.

CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—RECORD ON APPEAL FROM FINAL JUDGMENT

93-5603. (9397) When a new trial may be granted.

Subd. 7

Error in Instructions

Where two instructions are given on the same point and there is an irreconcilable conflict between them, it is not material whether either instruction is correct as applied to the record and objection to the second instruction should have been sustained. Bennett v. Dodgson, — M —, 284 P 2d 990, 993.

References

Cited in Perkins v. Kramer, 121 M 595, 198 P 2d 475, 477.

Voluntary statements damaging to accused, not proper subject of testimony, ordered by a testifying police or peace officer, as ground for granting new trial. 8 ALR 2d 1013.

Statements of witness in civil action secured after trial inconsistent with his testimony as basis for a new trial on ground of newly-discovered evidence. 10 ALR 2d 381.

Instructions in will contest defining natural objects of testator's bounty as ground for granting new trial. 11 ALR 2d 731.

Constitutional or statutory provision forbidding reexamination of facts tried by jury as affecting power to reduce or set aside verdict because of inadequacy. 11 ALR 2d 1217.

Standing of strangers to divorce proceeding to attack validity of divorce decree. 12 ALR 2d 717.

Deafness of juror as ground for new trial. 15 ALR 2d 534.

Death or disability of court reporter before transcription or completion of notes or record as ground for new trial or reversal. 19 ALR 2d 1098.

93-5605. (9399) Notice of intention—contents and service.

References

Cited or applied in State ex rel. Gilreath v. District Court, 127 M 431, 265 P 2d 651, 653 (dissenting opinion).

93-5606. (9400) Hearing of motion—continuance—papers used.

Time Motion for New Trial Submitted

Where trial judge after hearing arguments on a motion for a new trial and then made an order that the matter was not considered submitted until the parties filed briefs and allowed 30 days for the filing of briefs and then the final briefs were filed within 26 days, the motion for a new trial was considered submitted when the last brief was filed rather than at the end of the 30-day period allowed for filing the briefs since at that time the court had everything before it necessary to decide the motion for a new trial. State ex rel. Gilreath v. District Court, 127 M 431, 265 P 2d 651. (See, however, dissenting opinion, 127 M 431, 265 P 2d 651, 652.)

When Motion Deemed Denied and Jurisdiction Lost

Where more than 15 days elapsed before any further action was taken on a motion for a new trial, the motion was by force of this section deemed denied and the court had no jurisdiction thereafter to

grant the motion. State ex rel. Green v. District Court, 126 M 176, 246 P 2d 813.

References

Cited or applied in Bissell v. Bissell, — M —, 284 P 2d 264, 270.

Necessity that trial court give parties notice and opportunity to be heard before ordering new trial on its own motion. 23 ALR 2d 852.

93-5608. (9402) Contents of record on appeal.

Copy of Notice of Appeal

Where no copy of any notice of appeal appears in either the transcript on appeal or in the files of the Supreme Court or having been supplied in the court, the purported appeal will be dismissed for want of jurisdiction. Hansen v. Hansen, — M —, 290 P 2d 438.

References

Cited or applied in State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1015; First National Bank of Missoula v. Mercer, — M —, 279 P 2d 695, 696.

CHAPTER 57—JUDGMENT—MANNER OF GIVING AND ENTRY—JUDGMENT ROLL AND DOCKET—LIEN OF

93-5701. (9403) Judgment to be entered in twenty-four hours, etc.

Improper Verdict—Procedure

After a case has been submitted to the jury and a verdict returned, accepted and filed at the direction of the court and the jury discharged from the case, the only way to reach the verdict, if insufficient or against the law, is by a timely and proper motion for a new trial. Fauver v. Wilkoske, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

Judgment Notwithstanding the Verdict

It is not permissible in this state to move for a judgment non obstante veredicto in a law case. Fauver v. Wilkoske, 123 M 228, 211 P 2d 420, 425, 17 ALR 2d 518.

Power of successor judge taking office during term time to vacate, etc., judgment entered by his predecessor. 11 ALR 2d 1117.

93-5707. (9409) Judgment roll—contents and filing.

Order Dismissing an Action is Part of the Judgment Roll

Final order overruling motion to quash certiorari was an order deemed excepted to by section 93-5502 and properly incorporated in the judgment roll. State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1016.

Review of Judgment-Roll on Appeal

The presumption is that the evidence introduced at the trial supports the trial court's finding and judgment in all cases where the record contains no bill of exceptions but only the judgment roll. Warren v. Warren, 127 M 259, 261 P 2d 364, 366.

Vendee's interest under executory contract as subject to judgment lien. 1 ALR 2d 740.

93-5710. Recorded judgment or decree as notice, despite defects, etc.

Conclusiveness of allowance of account of trustee or personal representative as respects self-dealing in assets of estate. 1 ALR 2d 1060.

Judgment as res judicata pending appeal or motion for a new trial, or during the time allowed therefor. 9 ALR 2d 984.

Status of judgment or order as res judicata as affected by subsequent dismissal, discontinuance or nonsuit. 11 ALR 2d 1420.

93-5713. (9414) Satisfaction of a judgment—how made.

Compelling Acknowledgment of Satisfaction

Until a judgment is in fact satisfied the court has no authority to compel an acknowledgment of satisfaction or indorsement on the face of the judgment or on the margin of the record of judgment. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 632.

"Satisfaction in Fact" Defined

"Satisfaction in fact" means payment of the judgment without the entry of record of such payment and a tender of satis-

faction is not the same as satisfaction. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 632.

Tender of Satisfaction Refused—Extinguishing Judgment

Where tender of satisfaction of judgment is refused there can be no "satisfaction in fact" of the judgment by the payment of the money into court, but the debt must be extinguished under the provisions of section 58-423. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 632.

Remedy and procedure to avoid release or satisfaction of judgment. 9 ALR 2d 553.

CHAPTER 58—THE EXECUTION

93-5802. (9417) Execution—requirements of writ.

References

Cited or applied in Stokke v. Graham, — M —, 281 P 2d 1025, 1027.

93-5812. (9426) Claims by third persons.

References

Cited in Letz v. Letz, 123 M 494, 215 P 2d 534.

Surplus income of trust, in excess of amount required for support and education of beneficiary, as subject of supplementary proceedings. 36 ALR 2d 1227.

Rights of creditors of life insured as to options or other benefits available to him during his lifetime. 37 ALR 2d 268.

Execution in action on note or bond, not resulting in sale of mortgaged property, as precluding foreclosure of real estate mortgage. 37 ALR 2d 962.

93-5826. (9434) Sales—how conducted.

What constitutes a "public sale." 4 ALR 2d 575.

Enforceability as between the parties of agreement to purchase property at judicial sale for their joint benefit. 14 ALR 2d 1267.

CHAPTER 59—PROCEEDINGS SUPPLEMENTARY TO EXECUTION

93-5907. (9460) Proceedings upon claim of another party to property, etc.

Contested Claims to Property

Contested claims as to title to property which the judgment creditor seeks to subject to his execution can not be litigated in proceedings supplementary to execution. Letz v. Letz, 123 M 494, 215 P 2d 534.

CHAPTER 61—NUISANCE, WASTE AND TRESPASS ON REAL PROPERTY—ACTIONS FOR

93-6101. (9474) Nuisance defined and actions for.

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

Attracting people in such numbers as to obstruct access to neighboring premises, as nuisance. 2 ALR 2d 437.

Casting of light on another's premises as constituting nuisance. 5 ALR 2d 705.

Coalyard as nuisance. 8 ALR 2d 419.

Liability of landowner on theory of nuisance for drowning of child. 8 ALR 2d 1280, 1309.

Liability of owner or occupant of abutting property for damage caused by fall of tree into highway. 11 ALR 2d 626.

Action for damages by tenant against stranger for nuisance to help and comfort. 12 ALR 2d 1228.

CHAPTER 62—QUIETING TITLE TO PROPERTY, REAL AND PERSONAL AND OTHER ACTIONS CONCERNING REAL ESTATE

Section 93-6206. Service of summons by publication, when.
93-6207. Order for publication of summons—how obtained—affidavit.

93-6201. (9478.1) **Quieting title to personal property, action for.**

Jury Trial

Actions to quiet title and petitions for writs of possession to enforce a court's decree are of equitable cognizance and the findings of a jury in such an action are only advisory. Fuller v. Gibbs, 122 M 177, 199 P 2d 851, 854.

References

Cited or applied in Henningsen v. Stromberg, 124 M 185, 221 P 2d 438.

93-6202. (9478.2) **Provisions applicable.**

References

Cited or applied in Clinton v. Miller, 124 M 463, 226 P 2d 487; Bentley v. Rosebud County, 230 F 2d 1.

93-6203. (9479) **Actions to quiet title to real property—parties—venue.**

Stockholder of Corporation

A single stockholder cannot bring suit to quiet title to land to which he claims the corporation is the sole and exclusive owner. Noble v. Farmers' Union Trading Co., 123 M 518, 216 P 2d 925.

References

Cited or applied in Ryan v. Bloom, 120 M 443, 186 P 2d 879, 881; Warren v. Warren, 127 M 259, 261 P 2d 364, 366; Fraser v. Clark, 128 M 160, 273 P 2d 105, 115; Malcom v. Stondall Land & Investment Co., — M —, 284 P 2d 258, 261.

93-6204. (9480) **Parties defendant—unknown claimants.**

Caption of Complaint

It is not necessary that the quoted words at the end of this section be used in exactly that form but any other apt words might be used. Clinton v. Miller, 124 M 463, 226 P 2d 487, 492.

The commas in the quoted phrase at the end of this section are not necessary, material or of any moment. Clinton v. Miller, 124 M 463, 226 P 2d 487, 492.

The caption of a complaint using the quoted words at the end of this section is not defective because of the omission of the comma which appears after the word "estate." Clinton v. Miller, 124 M 463, 226 P 2d 487, 492.

Construction

As enacted in 1915 there was no comma after the word "estate" in the quoted words at the end of this section, and the added comma is unnecessary. Clinton v. Miller, 124 M 463, 226 P 2d 487, 492.

References

Cited or applied in Bentley v. Rosebud County, 230 F 2d 1.

93-6205. (9481) **Notice of pendency of action.**

Construction

The order for publication of summons referred to in this section is that provided for in section 93-6207. Clinton v. Miller, 124 M 463, 226 P 2d 487, 495.

Operation and Effect

This section specifies no particular or exclusive kind of proof to establish the fact that lis pendens was filed in the county clerk's office. Clinton v. Miller, 124 M 463, 226 P 2d 487, 495.

93-6206. (9482) **Service of summons by publication, when.** Upon the return of summons showing the failure to find any defendant specifically named in the complaint, the plaintiff may obtain an order for the service of summons upon such defendant, to be made by publication, upon filing with the clerk of said court an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, or that the defendant, if a foreign corporation, has no agent for the service of process, nor managing or business agent, cashier, secretary, or other officer within the state; or that the defendant, if a domestic corporation, has no officer or agent of such corporation, upon whom valid service of said corporation can be made and who can, after due diligence, be found within the state. Such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that dili-

gent inquiry was made, and it need not detail the facts constituting such inquiry.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9482, R. C. M. 1921; amd. Sec. 1, Ch. 66, L. 1949; amd. Sec. 1, Ch. 229, L. 1953.

Amendments

The 1949 amendment substituted the words "that after due diligence and search" following "affidavit setting forth" for "the facts" and added the last sentence.

The 1953 amendment completely rewrote this section. Prior to amendment it read "When any defendant specifically named in such complaint resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, or when any defendant is a foreign corporation, having no agent for the service of process, nor managing or business agent, cashier, secretary, or other officer within the state, or when any defendant is a domestic corporation and none of the officers or agents of such corporation, upon whom valid service of said corporation can be made, can, after due diligence, be found within the state, the plaintiff, upon the return of the summons showing due personal service within the state upon all defendants specifically named in the complaint, other than such as come within the meaning of the foregoing provisions of this section, and upon filing with the clerk of said court an affidavit setting forth that after due diligence and search with reference to any of such defendants upon whom personal service of summons within the state cannot be made, within the meaning of the foregoing provisions of this section, may obtain an order for the service of summons upon such defendants last mentioned, to be made by publication. The affidavit shall be sufficient for all purposes if the same is worded in the terms of this statute."

Repealing Clauses

Section 2 of Ch. 66, Laws 1949 and Sec. 2 of Ch. 229, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 66, Laws 1949 provided the act should be in effect from and after the date of its passage and approval. Approved February 25, 1949.

Section 3 of Ch. 229, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 6, 1953.

Cross-Reference

See note to sec. 93-6207. Clinton v. Miller, 124 M 463, 226 P 2d 487, 494.

Quiet Title Actions

Where the affidavit filed in support of the motion for an order allowing service by publication failed to fulfill the statutory requirements of setting forth the evidentiary facts supporting the conclusion that the defendant resides out of the state, a judgment as to such person is without force and effect. Bentley v. Rosebud County, 230 F 2d 1.

93-6207. (9483) **Order for publication of summons—how obtained—affidavit.** The plaintiff or his attorney may obtain an order for the service of summons upon all unknown claimants or possible claimants by publication, upon filing with the clerk of court an affidavit stating that he has made diligent search and inquiry for all persons who claim, or might claim, any right, title, estate, or interest in, or lien, or encumbrance upon, such real property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and has specifically named as defendants in such action all such persons whose names can be ascertained; a statement in such affidavit that said affiant has so made diligent search and inquiry shall be sufficient if made in the words of this statute and it need not detail, in any respect the acts constituting such diligent search and inquiry. One affidavit and order for service by publication may be made to include all defendants, known and unknown, upon whom such service is sought, and in such event but one (1) summons shall be published, and the same shall be directed to all defendants upon whom such summons shall be served by publication; but no order for service

by publication shall be made until proof of the filing of the notice of the pendency of such action, in accordance with the provisions of section 93-6205, has been made to the court. That the order above provided for may be issued by either the judge or the clerk of the court, and any order for the service of summons by publication in quiet title actions which may have been heretofore issued or made by the clerk of the court is hereby declared to be valid and of the same force and effect as if the same had been issued or made by the judge of the court.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9483, R. C. M. 1921; amd. Sec. 2, Ch. 70, L. 1931; amd. Sec. 1, Ch. 103, L. 1953.

Amendment

The 1953 amendment inserted the words "or his attorney"; substituted the word "stating" for "showing" in the first sentence and added the words "a statement in such affidavit that said affiant has so made diligent search and inquiry shall be sufficient if made in the words of this statute and it need not detail, in any respect the acts constituting such diligent search and inquiry."

Repealing Clause

Section 2 of Ch. 103, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 103, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

Affidavit Filed by Attorney

There is no statutory prohibition against the attorney for the plaintiff filing the affidavit required by this section. Clinton v. Miller, 124 M 463, 226 P 2d 487, 494.

Filing of Original Summons with Return Not Required

There is no provision which requires that the original summons with the return thereon must first be filed with the clerk of the court before an order of publication may be obtained. Clinton v. Miller, 124 M 463, 226 P 2d 487, 495.

93-6210. (9487) Jurisdiction acquired by service—effect of decree, etc.

References

Cited or applied in Bentley v. Rosebud County, 230 F 2d 1.

93-6211. (9488) Who bound by judgment.

References

Cited or applied in Bentley v. Rosebud County, 230 F 2d 1.

93-6215. (9491) When value of improvements may be allowed as set-off.

Deed Not Describing Land

A tax deed and quitclaim deed which did not describe the land did not constitute "color of title" which would enable defendant to set-off the value of improvements against the damages. Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co., 121 M 1, 190 P 2d 55, 61.

Operation and Effect

This statute does not prescribe the exclusive method by which an occupying claimant may recoup the value of improvements but a set-off may be obtained under the rules of the common law. Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co., 121 M 1, 190 P 2d 55, 62.

93-6225. (9501) Action to establish title to property, etc.

References

Cited or applied in Laas v. All Persons, 121 M 43, 189 P 2d 670, 671.

CHAPTER 63—PARTITION OF REAL ESTATE—ACTIONS FOR

93-6307. (9522) **Lis pendens to be filed.**

References

Cited or applied in Emery v. Emery, 122 M 201, 200 P 2d 265.

93-6329. (9544) **Proceeds of sale, disposition of.**

Rights of surviving spouse and children in proceeds of partition sale of homestead in decedent's estate. 6 ALR 2d 515.

CHAPTER 64—QUO WARRANTO

93-6401. (9576) **When proceedings may be instituted.**

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

Applicability of statute of limitations or laches to quo warranto proceedings. 26 ALR 2d 828.

CHAPTER 67—JUSTICES' COURTS—MANNER OF COMMENCING ACTIONS IN

93-6707. (9632) **Time for appearance of defendant.**

References

Cited in State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, 453.

CHAPTER 80—SUPREME COURT—APPEALS TO

93-8001. (9729) **How judgments and orders may be reviewed.**

Appeals from Justice Courts

The Supreme Court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. State ex rel. Estes v. Justice Court of Jefferson County, — M —, 284 P 2d 249, 250.

Application

This statute is both prohibitory and jurisdictional. McVay v. McVay, 128 M 31, 270 P 2d 393, 395.

Operation and Effect

The right of appeal is purely statutory. The legislature has laid down the rules governing appeals. Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 890.

References

Cited or applied in Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339, 341.

93-8002. (9730) **Party aggrieved may appeal—names of parties.**

References

Cited or applied in Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 893.

Right of express trustee to appeal from order or decree not affecting own personal interest. 6 ALR 2d 147.

Appeal by applicant for intervention from final judgment in the cause. 15 ALR 2d 368.

Parties entitled to appeal from an order on application for removal of personal representative, guardian or trustee. 37 ALR 2d 751.

93-8003. (9731) **From what judgment or order an appeal may be taken.**

Subd. 1—Final Judgments

Award of Temporary Alimony and Attorneys' Fees

An award of temporary alimony and attorneys' fees to a wife is a final judgment within the meaning of subdivision 1 of this section. Walker v. Walker, — M —, 285 P 2d 590, 592.

Findings of Fact and Conclusions of Law

Findings of fact and conclusions of law are not a judgment nor are they an order, as known to our practice; they are the court's statement on which he will base his order or judgment. Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 891.

Subd. 2—Orders

A. What Orders May be Appealed From

Denial of Motion to Release Attachment

Fact that motion was to vacate or release attachment rather than to dissolve the attachment would not prevent the order denying the motion from being appealable. Stallinger v. Goss, 121 M 437, 193 P 2d 810.

Denying Writ of Habeas Corpus

An order denying a writ of habeas corpus is appealable. State ex rel. Veach v. Veach, 122 M 47, 195 P 2d 697, 700.

Order Denying an Injunction

Where temporary injunction to abate nuisance under section 94-1002 was quashed the same day issued upon presentation of affidavit of defendant under section 93-4211 and in its stead was issued an order to show cause why an injunction should not issue and enjoining defendant from operating "any of the games of chance described in the complaint contrary to the laws of the State of Montana" such order was appealable. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Ordering Satisfaction of Judgment

An order, after final judgment, ordering plaintiff to satisfy judgment upon tender of specified amount by defendant was an appealable order. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 632.

Order Made after Final Judgment Denying Realtors' Motion to Strike from the Memorandum of Costs

Since an appeal may be taken from a special order made after judgment which modifies a judgment theretofore entered and adversely affects the rights of a party to the litigation, an application for a writ of supervisory control will be denied. State ex rel. Ferris v. District Court, 126 M 623, 255 P 2d 687.

B. What Orders May Not be Appealed From

Order for an Accounting

An order for an accounting is not an appealable order under this section. Corcoran v. Fousek, 125 M 223, 233 P 2d 1040, 1041.

In General

Effect of Failure to Appeal

Where a decree of distribution was entered on an estate and no appeal was taken from such decree, an affidavit thereafter filed and recorded, stating that the affiant was an heir and devisee of the will and claiming an interest in the real estate distributed, was void on the title to the land. Hart v. Barron, 122 M 350, 204 P 2d 797, 805.

References

Cited or applied in State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1015; State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866, 868; Malick v. Peterson, 124 M 585, 228 P 2d 963; Little v. Little, 125 M 278, 234 P 2d 832, 834; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 695; In re Hanson's Estate, 128 M 270, 273 P 2d 103, 104; State ex rel. Adamson v. District Court, — M —, 279 P 2d 691, 695; Fraser v. Clark, — M —, 282 P 2d 459, 460; In re Hansen's Estate, — M —, 284 P 2d 1007, 1009; State v. Zumwalt, — M —, 291 P 2d 257, 259; Marchi v. Brackman, — M —, 299 P 2d 761, 764.

Appealability of order entered on motion to strike pleading. 1 ALR 2d 422.

Provision for future accounting as affecting finality of judgment or decree for purpose of review. 3 ALR 2d 342.

Appealability of order overruling motion for judgment on pleadings. 14 ALR 2d 460.

Right to appellate review, on single appellate proceedings, of separate actions consolidated for trial in lower court, as affected by failure to object seasonably to appellate procedure. 36 ALR 2d 849.

93-8004. (9732) Time for taking appeal.

Dismissal of Appeal

Where notice of appeal was not served in the time allowed by law, the Supreme Court is without jurisdiction and the appeal will be dismissed. Malick v. Peterson, 124 M 585, 228 P 2d 963.

Supreme Court Rule

Supreme Court Rule VI providing that the "transcript shall be served and filed within sixty days after the appeal is perfected or the appeal will be subject to dismissal on motion of the adverse party"

has the force of a statute. In re Hanson's Estate, 128 M 270, 273 P 2d 103.

Time Limitation

Where the plaintiff failed to take his appeal within the statutory time limitation he could not obtain relief by a writ of review or a writ of supervisory control. McVay v. McVay, 128 M 31, 270 P 2d 393, 395.

Subd. 3—Appealable Orders

Order Denying Realtors' Motion to Strike from the Memorandum of Costs

An application for a writ of supervisory control will be denied since an appeal may be taken from a special order made after judgment which modifies a judgment theretofore entered and adversely affects the rights of a party to the litigation. State ex rel. Ferris v. District Court, 126 M 623, 255 P 2d 687.

Cross-Reference

See note to sec. 93-8003. Hart v. Barron, 122 M 350, 204 P 2d 797, 805.

References

Cited or applied in State ex rel. Sanford v. District Court, 124 M 429, 225 P 2d 866, 868; Little v. Little, 125 M 278, 234 P 2d 832, 834; Taylor v. Taylor, 125 M 341, 238 P 2d 904, 905; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 695; Wilson v. Wilson, — M —, 278 P 2d 219, 221; Fraser v. Clark, — M —, 282 P 2d 459, 460; In re Hansen's Estate, — M —, 284 P 2d 1007, 1009; State v. Zumwalt, — M —, 291 P 2d 257, 259.

Motion or petition for rehearing in court below as affecting time within which appellate proceedings must be taken or instituted. 10 ALR 2d 1075.

93-8005. (9733) Appeal—how taken.

Service of Notice

The notice contemplated in this section is a legal notice which must be served in the manner provided in section 93-8502. Malick v. Peterson, 124 M 585, 228 P 2d 963.

The statute governing service of notice of appeal must be complied with in order to give the court jurisdiction. McLeod v. McLeod, 124 M 590, 228 P 2d 965.

Service of Notice Must be On All Adverse Parties

Where two defendants had filed motions for change of venue and the motion was granted as to one but denied as to the other and an appeal was taken from the order granting the motion, notice of appeal should have been given to both defendants, and Supreme Court was without jurisdiction where only defendant in whose favor the motion was granted was given such notice. McLeod v. McLeod, 124 M 590, 228 P 2d 965.

Time for Filing Undertaking

Held: that where notice of appeal was served by mail on Monday, February 4, 1952, that day is excluded from computation in accordance with section 90-407 and defendants then had five full days commencing with Tuesday, February 5th within which to file the undertaking on appeal. As by section 59-510 office hours in public offices on Saturdays are from nine o'clock to twelve noon, the filing of the undertaking on Monday, February 11th complied with the Code. Appellants may not be cut off with but four days nor with only four and one-half days nor with any other time less than the five full days allowed by statute. Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339.

Who is an Adverse Party

An "adverse party" upon whom a notice of appeal is required to be served is one whose rights may be injuriously affected by a reversal or modification of the judgment from which the appeal is taken. Reardon v. Gilligan, 122 M 295, 202 P 2d 242, 244.

Where plaintiff alleged that he and defendant B jointly purchased land from the state with funds borrowed from defendant G in whose name deed was issued and prayed that the deed to G be declared a mortgage, and B answered denying any interest in the land, the administrator of B's estate (B having died) was an adverse party upon whom notice should have been served upon appeal by defendant G after judgment for plaintiff. Reardon v. Gilligan, 122 M 295, 202 P 2d 242.

Who is Entitled to Notice of Appeal

An adverse party within the meaning of the statute upon whom it is necessary to serve notice of appeal, is a party to a judgment whose rights may be injuriously affected by its reversal or modification, or one who has an interest in opposing the object sought to be accomplished by the appeal. Hence, one who would be benefited by a reversal is not an adverse party. McNaught v. Weyh, 128 M 418, 276 P 2d 491, 495.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 695; Benolken v. Miracle, 128 M 262, 273 P 2d 667, 669; Flynn v. Flynn, — M

—, 281 P 2d 510; Fraser v. Clark, — M —, 282 P 2d 459, 460.

Necessity of notice of application or intention to correct error in judgment entry in appellate and review proceedings. 14 ALR 2d 261.

93-8006. (9734) Undertaking or deposit on appeal.

References

Cited or applied in Benolken v. Miracle, 128 M 262, 273 P 2d 667, 669.

93-8011. (9739) Stay of proceedings—court may limit security.

Operation and Effect

On appeal from a change of venue the court has jurisdiction not only to hear and determine the appeal but also to hear, determine and act upon any incidental matters arising while the appeal is pending and that may ultimately affect the rights of the parties litigant. Thus the Supreme Court has the power to consider and determine a motion to dissolve the attachment. Fraser v. Clark, 128 M 160, 273 P 2d 105, 114. (Dissenting opinion, 128 M 160, 273 P 2d 105, 120.)

Where a notice of appeal from a judgment was served and filed, jurisdiction over the parties to the controversy and the subject-matter thereof passed from the district court and vested in the Supreme Court. It then became the duty of the Supreme Court to maintain the status quo of the parties and their rights until the controversy could be determined in this court, so that rights involved in such appeal may not be lost or prejudiced prior to such determination. Benolken v. Miracle, 128 M 262, 273 P 2d 667, 669.

Where an appeal was taken from an order appointing a person executor, the district court and its clerk were then without jurisdiction to issue letters testamentary to the executor and allowing him to qualify. In re Hansen's Estate, — M —, 284 P 2d 1007, 1010.

Stay of Proceedings in Lower Court on Appeal

Where an appeal is taken from a judgment declaring ownership of certain cattle and the general recorder of marks and brands held money derived from the sale of such cattle and which he deposited with the district court, the ownership and right to possession of the money was a matter embraced within the action and judgment and the lower court will be stayed from distributing such money pending determination of the appeal. Benolken v. Miracle, 128 M 262, 273 P 2d 667, 670.

93-8014. (9742) Cases in which stay of proceedings not allowed.

Operation and Effect

The issuance of letters testamentary after an appeal had been taken from the order of appointment of an executor and all acts done pursuant to the letters so issued were beyond the jurisdiction of the district court and void. Section 93-8016 does not save the action as the executor had not qualified by the time of the taking of the appeal. In re Hansen's Estate, — M —, 284 P 2d 1007, 1010.

Prohibitory Injunction

The Supreme Court is not empowered to stay, pending an appeal, the operation of a perpetual prohibitory injunction ordered in a final judgment in the district court. Brackman v. Kruse, 122 M 91, 217 P 2d 203, 204.

93-8016. (9744) Acts of same valid when appointment vacated.

Construction

The district court proceeded without jurisdiction when its clerk issued letters testamentary to a person appointed executor when an appeal was taken from the order appointing such person executor and such appeal was taken before the executor qualified. Neither his letters nor his acts done thereunder are saved by this section inasmuch as he never qualified. In re Hansen's Estate, — M —, 284 P 2d 1007, 1010.

Held, that where a person was appointed administrator, but before he qualified, an appeal was taken from the order appointing him administrator, such person could not then qualify and enter into administration of the estate for at the time of attempting to qualify the district court had lost jurisdiction of the matter because of the appeal. In re Hansen's Estate, — M —, 284 P 2d 1007, 1010.

93-8017. (9745) Record on appeal from orders other than new trial.

References

Cited or applied in Flynn v. Flynn, — M —, 281 P 2d 510; Hansen v. Hansen, — M —, 290 P 2d 438, 439.

93-8018. (9746) Authentication of copies—abbreviated record.

Operation and Effect

A transcript on appeal must be certified to be correct by either the clerk of the trial court or by the attorneys in the case, and if it is not done, a motion to dismiss is well founded. Kemp v. Murphy, 125 M 234, 233 P 2d 824, 826.

References

Cited or applied in Hansen v. Hansen, — M —, 290 P 2d 438, 439.

93-8019. (9747) When an appeal may be dismissed.

Failure to File Transcript

Where no extension of time was requested nor allowed for the filing of appellant's transcript on appeal, the appeal must be dismissed. First National Bank of Missoula v. Mercer, — M —, 279 P 2d 695, 697.

Operation and Effect

A motion to dismiss an appeal on the grounds that no transcript or brief of appeal had been served or filed by the appellants within the time prescribed by the rules of the Supreme Court will be denied when it appears that prior to the consideration of the motion to dismiss the appellant's transcript had been filed with the Supreme Court and the record perfected to the satisfaction of the court and the delay in filing such transcript has been without laches on the part of the appellants. McNaught v. McCahan, 126 M 616, 250 P 2d 912, 913.

References

Cited or applied in Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339, 341; Flynn v. Flynn, — M —, 281 P 2d 510.

93-8020. (9748) Effect of dismissal.

Subsequent Appeal

Where appeal was dismissed a subsequent appeal taken from the same judgment within the time allowed for taking appeals must likewise be dismissed. Libin v. Huffine, 124 M 361, 224 P 2d 144.

If plaintiffs are aggrieved by dismissal, their remedy is to promptly apply to Supreme Court to have order of dismissal modified and not to take another appeal from the same judgment. Libin v. Huffine, 124 M 361, 224 P 2d 144, 146.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 701, 705.

93-8021. (9749) Supplementing defective record.

References

Cited in In re Hall's Estate, 124 M 355, 224 P 2d 138, 140.

93-8023. (9751) Ruling against respondent may be reviewed.

Cross-appeal When Necessary

This section does not do away with the necessity for cross-appeals in cases wherein a party feels himself aggrieved by rulings on matters separate and distinct from those sought to be reviewed by appellant. Francisco v. Francisco, 120 M 468, 191 P 2d 317, 319, 1 ALR 2d 625.

In action to foreclose lien by taker up of animals under section 46-1410, where defendant appealed but plaintiff did not cross-appeal, a cross-assignment of error by plaintiff contending that allowance of ten cents per goat per day for caring for animals was not a reasonable allowance but that allowance should have been fifty cents per goat per day, could not be considered since the error was not of a compensatory character. Doornbos v. Ihde, 124 M 570, 228 P 2d 235, 237.

Failure to Make Assignment of Error or Cross Assignment of Error

Where appellant did not make an assignment of error, the court will likewise excuse the failure of the respondent to make a cross assignment of error. National Surety Corp. v. Kruse, 121 M 202, 192 P 2d 317, 318.

References

Cited or applied in Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889, 893.

CHAPTER 82—OFFER OF DEFENDANT TO COMPROMISE

93-8201. (9770) Proceedings on offer of the defendant, etc.

Operation and Effect

An "offer to do equity" in the answer when not accepted can not be used in evidence nor can it be regarded as an admission that defendants had waived any of their defenses. Rachou v. McQuitty, 125 M 1, 229 P 2d 965.

CHAPTER 84—MOTIONS AND ORDERS

93-8401. (9772) Order and motion defined.

Motions

A motion is not made by merely filing an application in writing with the clerk of the district court, but by the moving of the court or judge viva voce, to grant the order. State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 846.

As a motion is not an action but simply an application for an order it is not subject to the general rules of pleading. State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 846.

Since, ordinarily no question not open on the hearing of the original or main motion is presented for decision by a motion to quash, dismiss, deny or strike from the files or records the original motion or by a demurrer to such original motion, such motion or demurrer is regarded as superfluous, frivolous, confusing and bad practice. State ex rel. McVay v. District Court, 126 M 382, 251 P 2d 840, 846.

References

Cited or applied in State ex rel. Gilreath v. District Court, 127 M 431, 265 P 2d 651, 654 (dissenting opinion).

Motion in original action as proper remedy to avoid release or satisfaction of judgment. 9 ALR 2d 558, 561.

93-8402. (9773) Motions and orders—absence of judge.

Orders by a Substituted Judge

Where a substitute judge is appointed because of the disqualification of the original judge, the substituted judge is competent to make orders and rule on motions until there is a complete disposition of the case as far as the trial court is concerned. McLeod v. McLeod, 126 M 32, 243 P 2d 321.

References

Cited or applied in State ex rel. Gilreath v. District Court, 127 M 431, 265 P 2d 651, 654 (dissenting opinion).

93-8403. (9774) Notice of motion—at what time to be given.

References

Cited or applied in State ex rel. Gilreath v. District Court, 127 M 431, 265 P 2d 651, 654 (dissenting opinion).

93-8405. (9776) Order made out of court, etc.

Extension of Time for Filing Bill of Exceptions

If court erroneously made order extending the time to prepare, serve and file bill of exceptions under section 93-5505, it had authority to correct such order under the provisions of this section. Barcus v. Portland Cattle Co., 122 M 534, 207 P 2d 565, 566.

Objection to Order

Where order of court on application to perpetuate testimony was complained of the remedy was to apply to the court to vacate or modify the order and not by direct application for certiorari in the supreme court. State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1001; State ex rel. Lichte v. District Court, 121 M 34, 189 P 2d 1004, 1008.

CHAPTER 85—NOTICES AND FILING AND SERVICE OF PAPERS

93-8502. (9779) When and how served.

Service by Mail

Where the attorneys for the respondents resided in and maintained their offices in the same place where appellant's attorneys

reside, a notice of appeal by mail was insufficient. Malick v. Peterson, 124 M 585, 228 P 2d 963.

Necessity, in service by leaving process at place of abode, etc., of leaving a copy of summons for each party sought to be served. 8 ALR 2d 343.

What amounts to doing business in a state within statute providing for service of process in action against nonresident, natural person, or persons doing business in state. 10 ALR 2d 200.

93-8503. (9780) Service by mail, when.

Cross-Reference

See note to sec. 93-8502. Malick v. Peterson, 124 M 585, 228 P 2d 963.

References

Cited or applied in Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339, 341.

93-8504. (9781) Service by mail, how.

References

Cited or applied in Fey v. A A Oil Corp., 126 M 552, 255 P 2d 339, 341.

93-8505. (9782) Appearance—notices after appearance.

Operation and Effect

Attorneys appearing were entitled to notice of appeal. Malick v. Peterson, 124 M 585, 228 P 2d 963.

References

Cited in McLeod v. McLeod, 124 M 590, 228 P 2d 965.

CHAPTER 86—COSTS AND DISBURSEMENTS—COST BILL—SUIT IN FORMA PAUPERIS

93-8601. (9786) Compensation of attorneys—costs to parties.

Attorney's Fees Incurred in Condemnation Proceeding for a Private Road of Necessity Not Recoverable

Attorney's fees incurred in the defense of a condemnation proceeding for a private road of necessity under section 93-9923 are not recoverable as an expense of such action under this section or section 93-8618. Tomten v. Thomas, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1285.

References

Cited in In re Sikorski's Estate, 127 M 563, 268 P 2d 395, 399.

93-8602. (9787) When allowed, of course, to the plaintiff.

References

Cited or applied in Letz v. Letz, 123 M 494, 215 P 2d 534.

93-8604. (9789) Costs—when in the discretion of the court.

Allowance of attorneys' fees in, or other costs of, litigation by beneficiary respecting trust. 9 ALR 2d 1132.

93-8611. (9796) Costs in a review other than by appeal.

Operation and Effect

Prevailing party in proceeding for review of contempt judgment by writ of certiorari is entitled to recover its costs in the action. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

93-8618. (9802) What are costs and disbursements.

What are Not Allowable Costs

Attorney's fees incurred in the defense of a condemnation proceeding for a private road of necessity under section 93-9923 are not recoverable as an expense of such action under this section or section 93-8601. Tomten v. Thomas, 125 M 159, 232 P 2d 723, 725, 726, 26 ALR 2d 1285.

93-8619. (9803) Bill of costs.

Correctness of Memorandum—Burden of Proof

Verified memorandum is prima facie evidence of correctness of items of disbursements and the burden of overcoming such prima facie case rests on the adverse party, the party filing the memorandum being required to furnish further proof only in rebuttal. Letz v. Letz, 123 M 494, 215 P 2d 534.

References

Cited or applied in Tomten v. Thomas, 125 M 159, 232 P 2d 723, 724, 26 ALR 2d 1285.

93-8625. (9809) Poor person may sue without costs.

Right to sue in forma pauperis as dependent on showing of financial disability of attorney or other non-party who are non-applicants. 11 ALR 2d 607.

CHAPTER 87—GENERAL PROVISIONS

93-8702. (9817) Lost papers—how supplied.

Operation and Effect

This section authorizes the trial judge to proceed with the trial on substituted carbon copies of the papers and pleadings rather than the original where the orginal papers and pleadings were missing. Mortenson v. Mortenson, — M —, 285 P 2d 834, 835.

93-8706. (9821) Actions—when deemed pending.

Operation and Effect

Where company went upon land six days after entry of district court judgment quieting title and expended large sums of money drilling well it acted at its peril where case was thereafter appealed and reversed. Rieckoff v. Consolidated Gas Co., 123 M 555, 217 P 2d 1076, 1080.

This section precisely states when an action is deemed pending. Wilson v. Wilson, — M —, 278 P 2d 219, 223.

93-8708. (9823) Extension of time.

Application

It is doubtful whether the legislature intended when it amended section 93-5505 to still have this section operate as a further limitation upon the court in granting extensions of time for a bill of exceptions. State ex rel. Robbins v. Bonner, 128 M 45, 270 P 2d 400, 402.

Notice of Appeal

This section makes it clear that the time prescribed by law for the serving of notices of appeal may not be extended thereunder for notices of appeal are specifically excluded from the operation of the statute. Thus are the courts denied the authority to extend the maximum time prescribed by statute for the service or filing of a notice of appeal. State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 699.

Operation and Effect

This section and section 93-5505 are special statutes pertaining to the preparation and extension of time for the service and filing of bills of exceptions, and by the well-established rule of construction in this state, control over general statutes. Thus where a party did not present his bill of exceptions within fifteen days or get an extension of time for presenting the bill of exceptions, he could not rely on section 93-3905 pertaining to a court giving relief to a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 992, 994, 995.

References

Cited or applied in State ex rel. Doyle v. District Court, 126 M 615, 245 P 2d 382.

93-8718. (9833) Publication of order, etc., to be made once a week, etc.

Validity of legislation relating to publication of legal notices. 26 ALR 2d 655.

CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT

93-8901. (9835.1) Scope.

Application

If a governmental board delays unreasonably in instituting legal action seeking enforcement of its order and compliance with section 50-435, which requires coal mines to erect washrooms if they have more than 12 employees, the coal mine may institute an action at law for declaratory judgment under section 93-8901 et seq. Jeffries Coal Co. v. Industrial Accident Board, 126 M 411, 252 P 2d 1046, 1048.

Finding of Facts Required

In order to sustain a declaratory judgment the court must first have made findings of fact upon which the judgment could be based and the findings of fact cannot go outside the issues formulated by the pleadings. National Surety Corp. v. Kruse, 121 M 202, 192 P 2d 317, 319.

General Powers

The question as to whether property leased to a school district was exempt from taxation was proper to adjudicate in a declaratory judgment proceeding. Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

Operation and Effect

The judicial power under this act extends only to actual cases and controversies and not to abstract questions. Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 586.

Suits against tax officials based upon the illegality of their action in assessing or collecting taxes are not considered suits against the state, so that it is not necessary for the plaintiff to allege that the state has consented to be sued under the Uniform Declaratory Judgment Act of Montana. Brophy Coal Co. v. Matthews, 125 M 212, 233 P 2d 397, 399.

Relief against covenant restricting right to engage in business or profession as subject of declaratory judgment. 10 ALR 2d 743.

Extent to which principles of res judicata are applicable to judgments in actions for declaratory relief. 10 ALR 2d 782.

Tax question as proper subject of action for declaratory judgment. 11 ALR 2d 359.

Declaratory relief with respect to unemployment compensation. 14 ALR 2d 826.

Issue as to negligence as proper subject of declaratory judgment action. 28 ALR 2d 957.

Partnership or joint venture matters as subject of declaratory judgment. 32 ALR 2d 970.

93-8902. (9835.2) Power to construe, etc.

Persons Entitled to Bring Action

A decision on the constitutionality of a statute cannot be obtained under the Declaratory Judgment Act by a person who has no interest in the question except that of a "resident, citizen, taxpayer and elector." Chovanak v. Matthews, 120 M 520, 188 P 2d 582.

References

Cited or applied in Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

Relief against covenant restricting right to engage in business or profession as subject of declaratory judgment. 10 ALR 2d 743.

93-8903. (9835.3) Before breach.

References

Cited or applied in Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

93-8904. (9835.4) Declarations concerning administration of trusts, etc.

References

Cited or applied in Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

93-8905. (9835.5) Enumeration not exclusive.

Construction

The question as to whether property leased to a school district was exempt from taxation was proper to adjudicate in a declaratory judgment proceeding. Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

93-8911. (9835.11) Parties.

Burden of proof in actions under general declaratory judgment acts. 23 ALR 2d 1243.

93-8912. (9835.12) Construction.

References

Cited or applied in Northwestern Improvement Co. v. Rosebud County, — M —, 288 P 2d 657, 659.

CHAPTER 90—CERTIORARI (WRIT OF REVIEW)

93-9001. (9836) Writ of review defined.

Operation and Effect

Certiorari is an extraordinary remedy and the proceeding under the writ is a special proceeding. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

Review of Contempt

The only method to review an adjudication for contempt is by writ of certiorari. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

93-9002. (9837) When and by what courts granted.

Grounds for Writ

The power of a court of review to issue a writ of certiorari is limited and the writ may be granted only when there has been an excess of jurisdiction. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

Not Available to Correct Errors within Jurisdiction

The writ of certiorari cannot be employed to correct errors committed in the exercise of jurisdiction. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 766.

Not Available When Time for Appeal Permitted to Lapse

The aggrieved party may not permit the time for taking an appeal to lapse and then have the judgment or order against him reviewed and annulled on writ of certiorari. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 766.

Not Available Where Error may be Reached by Appeal

District court exceeded its jurisdiction by issuing a writ of review and making orders against the justice of the peace when the record shows that (1) the justice of the peace was acting within his jurisdiction, (2) that the defendants may appeal to the district court from any judgment entered against them in the justice's court, (3) that on such appeal the cause will be tried anew in the district court, and (4) that such remedies so available to defendants are plain, speedy and adequate. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861.

Operation and Effect

Writ of review is not available where the plaintiff simply did not take his appeal within the statutory time of 60 days under section 93-8004. McVay v. McVay, 128 M 31, 270 P 2d 393, 395.

What Must Be Shown to Obtain This Writ

To obtain relief by writ of certiorari three essentials must coexist, namely, excess of jurisdiction, absence of right to appeal and lack of a plain, speedy and adequate remedy other than certiorari. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

When Remedy Is Not Proper

The writ will not be granted for the correction of merely harmless, technical or formal errors which are not shown to have resulted prejudicially, or to have caused substantial injustice to the relator. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 766.

Where intermediate judgment requiring the payment of alimony pendente lite in action for divorce was not appealed, it cannot be reviewed and annulled on writ of certiorari after judgment for contempt. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 274.

93-9003. (9838) Application for—how made.

References

Cited in State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1014.

93-9004. (9839) The writ to be directed to the inferior tribunal, etc.

References

Cited in State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

93-9005. (9840) Contents of the writ.

References

Cited in State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

93-9008. (9843) The review under the writ, extent of.

Excess of Jurisdiction

The power of a court of review to issue a writ of certiorari is limited and the writ may be granted only when there has been an excess of jurisdiction. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 765.

A writ of certiorari to review judgment of contempt can only be made when there is a showing that the tribunal acted in excess of jurisdiction. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

Scope of Review

The hearing in a certiorari proceeding is limited to a review of the record of the inferior tribunal, board or officer for the sole purpose of determining from such record whether the tribunal, board or officer had jurisdiction to do the act, to make the order or to render the judgment of which complaint is made. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 766.

Existence of jurisdictional facts found by inferior tribunal as subject of inquiry on certiorari. 5 ALR 2d 675.

93-9011. (9846) Judgment roll.

Operation and Effect

This section must be construed with other statutes relating to appeal and effect given to all as if they were all parts of the same statute. State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1015.

Papers in Judgment Roll

While this section sets forth the minimum contents of the judgment roll, it does not follow that only the papers therein enumerated may be incorporated in the judgment roll. State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1015.

Special Proceeding

When there is an appeal from a final judgment entered in a special proceeding the judgment roll is that described in section 93-5707. State ex rel. Walker v. Board of Comrs., 120 M 413, 187 P 2d 1013, 1015.

CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

93-9101. (9847) Mandate defined.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

93-9102. (9848) When and by what court issued.

General Requisites for Issuance of Writ

The writ lies only when the person seeking it is entitled to have the defendant perform a clear legal duty, and then only when there is no speedy or adequate remedy in the ordinary course of law. State ex rel. Kennedy v. District Court, 121 M 320, 194 P 2d 256, 261, 2 ALR 2d 1050.

Mandamus Lies to Compel Calling in of Another Judge

Mandamus is the proper remedy where a district judge fails to call in another district judge after an affidavit of bias has been filed under section 93-901. State ex rel. Coleman v. District Court, 120 M 372, 186 P 2d 91, 94.

Mandamus Lies to Compel Issuance of License

Mandamus will lie to compel issuance of license for logging trailer under section 53-122. State ex rel. Sharp v. Cross, 123 M 261, 211 P 2d 760.

Operation and Effect

Mandamus is properly issued to carry into effect the judgment of the Supreme Court where the district court fails for any reason to execute its mandate from

the Supreme Court. State ex rel. Kitchens v. District Court, — M —, 294 P 2d 907, 911.

When Mandamus is Not Proper

Where the holder of a registered brand died and thereafter the brand expired without being re-registered, the brand was then open to record by anyone; hence, mandamus brought by the administrator of the deceased person at a later date would not lie to require the recorder of marks and brands to record the brand in the administrator's name as there is no clear legal duty upon the recorder to do what the administrator required by his complaint. Benolken v. Miracle, — M —, 289 P 2d 953, 954.

Requiring successor judge to journalize finding or decision of predecessor. 4 ALR 2d 884.

Mandamus to protect charitable or eleemosynary corporation against use of same or similar name by another corporation. 27 ALR 2d 962.

Mandamus to compel municipal officials to enforce zoning regulations. 35 ALR 2d 1136.

93-9106. (9852) The adverse party must answer under oath.

References

Cited or applied in Esterby v. Justice Court of Hellgate Township, 127 M 1, 256 P 2d 544, 546; State ex rel. Adamson v. District Court, — M —, 279 P 2d 691, 692.

93-9107. (9853) If an essential question of fact is raised, etc.

References

Cited or applied in Esterby v. Justice Court of Hellgate Township, 127 M 1, 256 P 2d 544, 546.

93-9111. (9857) If no answer be made, etc.

References

Cited or applied in State ex rel. Helena Housing Authority v. City Council of Helena, 125 M 592, 242 P 2d 250, 256.

93-9112. (9858) Damages, costs and peremptory mandate allowed, etc.

Attorney Fees

Attorney fees are damages within the meaning of the statute. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1078.

Where counsel for relatrix made several trips to consult with a judge who had been disqualified about calling in another judge and then later instituted mandamus proceedings to compel the appointment of another judge, such expenses of travel is not a proper item of costs incident to the institution of the mandamus proceeding. It was a matter that should have been attended to by letter or telephone. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1079.

Damages and Costs

Held that where the judge issued the order sought, one day after the relatrix instituted mandamus proceedings to compel the action, the relatrix could still recover reasonable attorneys' fees, costs and damages for instituting and prosecuting the mandamus proceedings. State ex rel. O'Sullivan v. District Court, 127 M 32, 256 P 2d 1076, 1079.

References

Cited or applied in State ex rel. Miller v. District Court, — M —, 294 P 2d 903, 904.

CHAPTER 92—PROHIBITION—WRIT OF

93-9201. (9861) Prohibition defined.

Habeas Corpus Proceeding

Where, during the course of a divorce proceeding a judge is disqualified and another judge assumes jurisdiction and commits the husband to jail for contempt, on a habeas corpus petition brought by the jailed husband the disqualified judge would not be authorized to act and a writ of prohibition will lie to prohibit such judge from proceeding further in the habeas corpus matter. State v. District Court of Lewis and Clark County, — M —, 295 P 2d 233.

Nature of Writ

If the district court and judge were proceeding within the jurisdiction given them by the Constitution and statutes of this state, they may not be restrained by this writ out of the Supreme Court. Moreover, even though the district court at some point exceeded its jurisdiction, the

writ of prohibition must be denied if the person has another plain, speedy and adequate remedy in the ordinary course of law. State ex rel. Adamson v. District Court, — M —, 279 P 2d 691, 693.

Prohibition does not properly issue as a writ of right, but only in the exercise of a sound judicial discretion to arrest the proceedings of courts, or tribunals or officers exercising judicial functions, but acting at the time without or in excess of its or their jurisdiction. State ex rel. Adamson v. District Court, — M —, 279 P 2d 691, 693.

Operation and Effect

Writ of prohibition does not lie against the county superintendent of schools to prevent her from acting in an appeal taken to her by a teacher who had been denied re-employment by the school board since by section 75-2411 appeals from such dismissals go to the county superintendent of schools. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209.

When Writ May Be Granted

Refusal of court to set aside indictments on grounds set forth in section 94-6601 may be reviewed on writ of prohibition under the authority granted the Supreme Court by Const., Art. VIII, sec. 2 giving it superintending control over the courts. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1039.

Supreme Court had jurisdiction to grant writ of prohibition to prevent payment of grand jury illegally in session. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

Writ May Run to End Litigation and Save Expense

The writ of prohibition may be issued to end litigation and save expense. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052, 1054.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

93-9202. (9862) Where and when issued.

Operation and Effect

Where Supreme Court issued an alternative writ of prohibition against a district court judge, and before the return date the district judge conceded that he was disqualified and would take no further part in the case in the district court, the alternate writ will be dissolved as there is no purpose for it. State ex rel. Miller v. District Court, — M —, 294 P 2d 903. (Dissenting opinion, — M —, 294 P 2d 903, 904.)

References

Cited or applied in State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 213; State v. District Court of Lewis and Clark County, — M —, 295 P 2d 233, 237.

93-9204. (9864) Certain provisions of the preceding chapter applicable.

Operation and Effect

This section adopts for writs of prohibition most of the statutes governing the practice applicable to writs of mandamus. Esterby v. Justice Court of Hellgate Township, 127 M 1, 256 P 2d 544, 546.

Pleading of Damages and Attorney Fees

The first condition to the recovery of damages and attorney fees is that they be claimed in the pleading. If they are not claimed in the pleading they are waived. State ex rel. Miller v. District Court, — M —, 294 P 2d 903, 904.

References

Cited or applied in State ex rel. Adamson v. District Court, — M —, 279 P 2d 691, 692.

CHAPTER 94—CONFESSION OF JUDGMENT WITHOUT ACTION

93-9401. (9868) Judgment may be confessed for debt due, etc.

Res judicata as affected by fact that former judgment was entered by agreement or consent. 2 ALR 2d 514.

What law governs validity of warrant or power of attorney to confess judgment. 19 ALR 2d 544.

CHAPTER 97—FORCIBLE ENTRY AND UNLAWFUL DETAINER—ACTIONS FOR

93-9701. (9887) Forcible entry defined.

Operation in General

Where the right to possession of real property is in dispute, the owners thereof may not take the law into their own hands and proceed by violence to take possession thereof. In order to secure such possession, resort must be had to the peaceful process of law. Brown v. Grenz, 127 M 49, 257 P 2d 246, 248.

Forcible entry and detainer as a remedy of tenant against stranger wrongfully interfering with his possession. 12 ALR 2d 1199.

93-9703. (9889) Unlawful detainer defined.

Action after Giving Notice

Where owner, after giving notice under this section, commenced a course of action and conduct which forced the tenant from the premises, instead of filing a complaint as provided by section 93-9708, he was liable for wrongful eviction. Brown v. Grenz, 127 M 49, 257 P 2d 246.

Agricultural Lands

The term "agricultural lands" as used in this section is to distinguish it from mining or urban property and it includes land used for grazing purposes. Hamilton v. Rock, 121 M 245, 191 P 2d 663, 666.

Notice to Quit

Whether notice that deal with regard to the sale of land was off and that if there was any further desire to buy or lease land they should see the party appointed to act as agent for the owner was a notice to quit, was a question for the jury. Hamilton v. Rock, 121 M 245, 191 P 2d 663, 666.

93-9705. (9891) What courts have jurisdiction.

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 999.

93-9706. (9892) Parties defendant.

Operation and Effect

Nothing in this section denies to any defendant in any action brought under this chapter the permissive right accorded by section 93-3415 to any defendant to file a cross-complaint, and therefore, under section 93-9707 which incorporates provisions of sections 93-2301 to 93-8718 relating to parties, the provisions of section 93-3415 are applicable. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 998.

93-9707. (9893) Parties generally.

Operation and Effect

This section and section 93-9718 specifically make certain designated sections of the Code of Civil Procedure, which includes 93-3415, applicable to proceedings for forcible entry and unlawful detainer and authorize a defendant therein to file a cross-complaint. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 995, 998.

93-9708. (9894) Complaint—judge to fix day for appearance, etc.

References

Cited in State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, 453; Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 997; Brown v. Grenz, 127 M 49, 257 P 2d 246.

93-9711. (9897) Defendant may appear, etc.

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 997.

93-9714. (9900) Complaint must be amended in certain cases.

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 997.

93-9716. (9902) Verification of complaint and answer.

References

Cited or applied in Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 995, 997, 998.

93-9718. (9904) Rules of practice.

Operation and Effect

This section and section 93-9707 specifically make certain designated sections of the Code of Civil Procedure, which includes 93-3415, applicable to proceedings for forcible entry and unlawful detainer and authorize a defendant therein to file a cross-complaint. Hutchinson v. Burton, 126 M 279, 247 P 2d 987, 995, 997, 998.

93-9720. (9906) Relief against forfeiture of lease.

References

Cited or applied in Davis v. Burton, — M —, 278 P 2d 213, 218.

CHAPTER 98—CONTEMPTS

93-9801. (9908) What acts or omissions are contempts.

Enforcement of contract by party to procure insurance on his own life by contempt proceedings. 12 ALR 2d 983.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous. 12 ALR 2d 1059.

Punishment of civil contempt in other than divorce cases by striking, pleading or entering default judgment for dismissal against contemner. 14 ALR 2d 580.

Procuring perjury as contempt. 29 ALR 2d 1157.

Bail jumping after conviction, failure to surrender or to appear for sentencing and the like, as contempt. 34 ALR 2d 1100.

93-9803. (9910) A contempt committed in the presence of the court, etc.

Contemptuous Pleading

The filing of a complaint in a civil action containing immaterial and irrelevant allegations of scandalous and defamatory matter concerning the lives and characters of the members of the grand jury constituted contempt. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

Where contempt was based on scandalous and defamatory allegations in pleading, which allegations were immaterial and irrelevant, the truth or falsity of the allegations is immaterial. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

Sufficiency of Affidavit Charging Contempt

County attorney's accusatory affidavit was not insufficient because made on information and belief. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

County attorney's accusatory affidavit specifically charging that the accused filed a complaint containing false, malicious, untrue, libelous, defamatory and contemptuous matter concerning members of the grand jury and its prosecutor and that such a filing constituted contempt was sufficient. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

Privilege against self incrimination as to testimony before grand jury as affecting contempt proceedings. 38 ALR 2d 239.

93-9809. (9916) Hearing.

Proof

In action for contempt for failure to pay alimony pendente lite it is not necessary for the wife to show the husband's ability to pay, but lack of ability to perform is a defense to be advanced and to be proved by the accused. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 274.

Where orders of court ordering payment of alimony pendente lite and support money and finding of ability to pay were not appealed, and there was substantial evidence in the record tending to establish ability to pay, court had jurisdiction to sentence for contempt. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 274.

93-9810. (9917) **Judgment and penalty, if guilty.**

Fine Enforced by Imprisonment

It is well settled in this jurisdiction that the payment of a fine imposed upon one adjudged guilty of contempt may be enforced by imprisonment and that imprisonment in excess of five days is permissible to compel such payment. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

Purge Order

A purge order contained in a judgment for contempt is not coercive and beyond the jurisdiction of the court, they being for the defendant's benefit. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 768.

Suspension of Execution

Contempt order containing provision for the suspension of execution if monthly payments are made "each month after the present month, the execution of the judgment will continue to be suspended, and this for the period of one year; and if the payments have been continued for twelve of such calendar months then the execution of such judgment will be continued indefinitely," was not a judgment for an indefinite period of time but twelve months was fixed as the maximum of the coercive effect. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 769.

93-9811. (9918) **If the contempt is the omission, etc.**

Alimony—Failure to Pay

A person may be sentenced for contempt under this section for failure to pay alimony pendente lite although he has no money and no income, where it is shown that the defendant has the ability to obtain such funds by his labor. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 275.

Imprisonment

A person who refuses to perform a judicial order which he is able to perform may be imprisoned until he complies with such order. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 768.

93-9814. (9921) **Judgment and orders in such cases final.**

Operation and Effect

The writ of certiorari is discretionary and is only granted when there has been a showing that tribunal making the judgment of contempt acted in excess of jurisdiction. State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

CHAPTER 99—EMINENT DOMAIN

Section 93-9902. What are public uses.
93-9903. What estates in lands may be acquired by condemnation.
93-9903.1. Appropriation of underground natural gas reservoir—effect on landowner's right to drill.
93-9908. The complaint and its contents.
93-9909. Summons, what to contain—how issued and served.
93-9911. Power of court to appoint commissioners, etc.
93-9913. The date with respect to which compensation shall be assessed, and the measure thereof.

93-9902. (9934) **What are public uses.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.

3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and

alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten (10) families, or of any public buildings belonging to the state, or to any college or university.

10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted.

14. Underground reservoirs suitable for storage of natural gas.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R. C. M. 1921; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1238.

Compiler's Note

Sections 1 to 5 of Ch. 259, Laws 1955 are compiled as secs. 60-801 to 60-805.

Amendments

The 1953 amendment added subsection 14.

The 1955 amendment substituted present subd. 14 for one that read "Underground barren reservoirs suitable for storage of natural gas, except that this subsection 14 shall only apply to a sand stratum or formation known to be suitable for use as an underground gas storage reservoir."

References

Cited or applied in Tomten v. Thomas, 125 M 159, 232 P 2d 723, 724, 725, 26 ALR 2d 1285.

Damage to private property caused by negligence of governmental agents as "taking," "damage" or "use" for public purposes in constitutional sense. 2 ALR 2d 707.

Off-street public parking facilities. 8 ALR 2d 394.

Constitutionality of reforestation or forest conservation legislation. 13 ALR 2d 1095.

Condemnation of another railroad's property for purposes of spur track and the like. 35 ALR 2d 1340.

Condemnor's acquisition of, or right to, minerals under land in eminent domain for highway purposes. 36 ALR 2d 1425.

Compulsory polling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, as taking private property for private use. 37 ALR 2d 439.

93-9903. (9935) **What estates in lands may be acquired by condemnation.** The following is a classification of the estates and rights in lands subject to be taken for the public use:

1. Such estate or rights as may be necessary up to and including a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs or dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or for the underground storage of natural gas by a natural gas public utility as defined in this act. When the appropriation is for the underground storage of natural gas, all of the right, title, interest and estate in the real property and in the subsand stratum, formation or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of one year of the use for which the same was appropriated and thereupon, the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of land, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

History: En. Sec. 581, p. 190, L. 1877; re-en. Sec. 581, 1st Div. Rev. Stat. 1879; re-en. Sec. 599, 1st Div. Comp. Stat. 1887; re-en. Sec. 2212, C. Civ. Proc. 1895; re-en. Sec. 7332, Rev. C. 1907; re-en. Sec. 9935, R. C. M. 1921; amd. Sec. 1, Ch. 158, L. 1943; amd. Sec. 2, Ch. 245, L. 1953; amd. Sec. 7, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1239.

Compiler's Note

Sections 3 and 4 of Ch. 245, Laws 1953 are compiled as secs. 93-9908, 93-9911.

Amendments

The 1953 amendment in subsection 1 inserted the words "other than underground reservoirs provided for in subsection 14 of section 1 of this act."

The 1955 amendment deleted what was added by the 1953 amendment and added that part of subd. 1 beginning with the words "or for the underground storage * * *."

93-9903.1. Appropriation of underground natural gas reservoir—effect on landowner's right to drill. The appropriation of any sand, stratum or formation for use as an underground natural gas storage reservoir shall be without prejudice to the rights of the owner or owners of said lands, or of the oil, gas or other mineral rights therein, to drill or bore through the sand, stratum or formation so appropriated for use as an underground natural gas storage reservoir, in order to explore for, produce, process, treat or market any oil, gas or other minerals that might be contained in said lands above or below the sands, stratum or formation so appropriated. Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of

the gas therefrom, by reason of such boring or drilling through of the sand, stratum or formation used as such underground gas storage reservoir shall be paid by the persons, firm or corporation then owning such underground gas storage reservoir.

History: En. Sec. 5, Ch. 245, Laws 1953.

Separability Clause

Section 6 of Ch. 245, Laws 1953 read: "If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional."

Repealing Clause

Section 7 of Ch. 245, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Condemnor's acquisition of, or right to, minerals under land taken in eminent domain. 36 ALR 2d 1424.

93-9904. (9936) **Private property defined—classes enumerated.**

Subd. 4

Highways

Under section 32-1615 the state highway commission is the only tribunal authorized to condemn land for relocating highways, and even assuming that the taking of an existing highway is justified by this section as a more necessary public use where the purpose is to build a dam and a reservoir; yet the public utility building the dam cannot acquire land for relocating the highway since that function is exclusively within the power of the highway commission. State ex rel. Bartholomew v. District Court, 126 M 183, 248 P 2d 215, 216.

References

Cited or applied in Tomten v. Thomas, 125 M 159, 232 P 2d 723, 724, 26 ALR 2d 1285.

93-9905. (9937) **Facts necessary to be found before condemnation.**

Appeals from Findings of Fact and Conclusions of Law

Since this section allows appeals from any finding or judgment made or rendered under this chapter, as in other cases and section 93-8003 allows appeals from final judgments or orders, an appeal does not lie from the court's finding of fact or conclusions of law. Sheridan County Electric Co-op. v. Anhalt, 127 M 71, 257 P 2d 889. (See, however, dissenting opinion, 127 M 71, 257 P 2d 889, 894.)

References

Cited or applied in Tomten v. Thomas, 125 M 159, 232 P 2d 723, 724, 26 ALR 2d 1285.

93-9908. (9940) **The complaint and its contents.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of plaintiff.

4. If a right-of-way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement, or town, or

a county, the county commissioners of the county may be named as plaintiff.

6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the state oil and gas conservation commission as set forth in section 4 [93-804] of this act.

History: En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R. C. M. 1921; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1244.

Amendments

The 1953 amendment substituted "is" for "be" at the beginning of subdivision 4; and added subdivision 6.

The 1955 amendment near the beginning of subd. 6 deleted the words "known to be" which appeared between the words "formation" and "suitable" and at the end of subd. 6 substituted "as set forth in section 4 of this act" for "setting forth its findings as to the existence of all of the facts contained in this paragraph."

Propriety of pleading of promissory statements of condemner as to character and use or undertakings to be performed by it. 7 ALR 2d 381.

93-9909. (9941) **Summons, what to contain—how issued and served.** The clerk must issue a summons, which must contain the names of the parties, a description of the lands and other property proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned as prayed for in the complaint. Such summons must, in other particulars, be in form of a summons in a civil action, and must be served in like manner upon each defendant named therein, at least ten (10) days previous to the time designated in such notice for the hearing, and no copy of the complaint need be served. But the failure to make such service upon a defendant does not affect the right to proceed against any or all other of the defendants, upon whom service of summons had been made.

History: En. Sec. 587, p. 192, L. 1877; re-en. Sec. 587, 1st Div. Rev. Stat. 1879; amd. Sec. 605, 1st Div. Comp. Stat. 1887; amd. Sec. 2218, C. Civ. Proc. 1895; re-en. Sec. 7338, Rev. C. 1907; re-en. Sec. 9941, R. C. M. 1921; amd. Sec. 9, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1245.

Amendment

The 1955 amendment inserted the words "and other property" in this section.

93-9911. (9943) **Power of court to appoint commissioners, etc.** The court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in subdivision 5, section 93-9904, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

2. To determine whether or not the use for which the property is sought to be appropriated is a public use, within the meaning of the laws of this state;

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary;

4. If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three (3) competent persons, resident in said county, commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner, or other person interested in such property, as damages, by reason of the appropriation of such property, and specify the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any person as a commissioner on the same grounds that he might object to him as a trial juror.

5. If the property sought to be appropriated is a sand, stratum or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners so appointed to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir, and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage reservoir, and for use in connection with the creation, operation and maintenance thereof, and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property; provided, however, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas.

The court shall appoint three (3) persons, qualified as experts and recommended as such by the oil and gas conservation commission of the state of Montana, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

History: Ap. p. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 607, 1st Div. Comp. Stat. 1887; amd. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7340, Rev. C. 1907; re-en. Sec. 9943, R. C. M. 1921; amd. Sec. 4, Ch. 245, L. 1953; amd. Sec. 10, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1247.

Compiler's Note

Section 5 of Ch. 245, Laws 1953 is compiled as sec. 93-9903-1.

Amendments

The 1953 amendment added subdivision 5.

The 1955 amendment in the first para-

graph of subd. 5, substituted "each person for his interest" for "each owner or other person interested"; inserted the words "and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage reservoir"; inserted the words "and for all the native gas contained in said reservoir"; added the proviso in that paragraph and in the second paragraph of subd. 5 substituted "each person for his interest" for "each owner, or other person interested."

Separability Clause

Section 11 of Ch. 259, Laws 1955 read "Constitutionality. If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional."

Repealing Clause

Section 12 of Ch. 259, Laws 1955 repealed all acts and parts of acts in conflict therewith.

93-9912. (9944) **Meeting of commissioners.**

Admissibility in condemnation proceedings of opinion evidence as to probable profits derivable from land condemned if devoted to particular agricultural purposes. 16 ALR 2d 1113.

93-9913. (9945) **The date with respect to which compensation shall be assessed, and the measure thereof.** For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation of all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, and the cost of removal of all necessary personal property from the condemned real property and of the damage to such personal property, if any, incurred by such removal. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or damages.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957. Cal. Civ. Proc. Sec. 1249.

Amendment

The 1957 amendment added to the first sentence the words "and the cost of removal of all necessary personal property from the condemned real property and of the damage to such personal property, if any, incurred by such removal."

Repealing Clause

Section 2 of Ch. 133, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Unity or contiguity of properties essential to allowance of damages in eminent domain proceedings on account of remaining property. 6 ALR 2d 1193.

New or additional compensation for use by municipality or public of subsurface of street or highway for purposes other than sewers, pipes, conduits for wires, and the like. 11 ALR 2d 180.

Conditions imposed to approval of proposed subdivision map or plat as constituting taking of property for public use without compensation. 11 ALR 2d 532.

93-9919. (9951) **Final order of condemnation—what to contain, etc.**

Condemnor's waiver, surrender or limitation, after award, of rights or part of property acquired by condemnation. 5 ALR 2d 724.

Quotient condemnation report or award by the commissioners or the like. 39 ALR 2d 1208.

93-9921. (9953) Costs, allowance and apportionment of.

Relinquishment of part of land or incorporeal rights therein as affecting costs. 5 ALR 2d 739.

Liability of condemnor in eminent domain proceedings for fees of expert witnesses who testified for property owner. 18 ALR 2d 1225.

93-9922. (9954) Rules of practice.

Findings of Fact and Conclusions of Law

Where United States district court did not make findings of fact and state conclusions of law before entry of judgment, case was remanded with directions to make such findings of fact and state conclusions of law. Dawson County v. Hagen, 172 F 2d 387.

93-9923. (9955) Private roads.

Expenses of Action

Attorney's fees are not allowed as an expense of a proceeding in condemnation for a private road of necessity under this section or section 32-1401. Section 93-9922 adopts sections 93-8601 and 93-8618 to the proceedings. Under 93-8601 attorney's fees in condemnation proceedings are not enumerated, nor are they allowed under 93-8618 as a cost or disbursement less specifically authorized by law or is according to the course and custom of the court. In Montana it is not customary to include attorney's fees as a cost; and in this section and 32-1401 the term "expenses" is synonymous with the term "costs." Tomten v. Thomas, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1285.

Operation and Effect

Under this section, the provisions of sections 93-8601 and 93-8618 are made applicable to condemnation proceedings for a private road of necessity and therefore attorney's fees are not includable as an expense under 93-9923. Tomten v. Thomas, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1285.

CHAPTER 201—ARBITRATION—SUBMISSION TO

93-201-6. (9977) Award to be in writing—when judgment to be entered.

Quotient arbitration award or appraisal. 20 ALR 2d 958.

93-201-7. (9978) Award may be vacated in certain cases.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award. 27 ALR 2d 1160.

Loss of right to arbitration through laches. 37 ALR 2d 1125.

CHAPTER 301—EVIDENCE—DEFINITIONS—KINDS AND DEGREES OF

93-301-1. (10488) Definition of evidence.

Bloodhound Testimony

In this state, so-called "bloodhound testimony" is incompetent and inadmissible on the trial of any person accused of a crime. State v. Storm, 125 M 346, 238 P 2d 1161 (two justices dissenting).

93-301-4. (10491) The degree of proof required to establish facts.

Degree of Proof

The law does not require demonstration. It does not require such a degree of proof as, excluding possibility of error, produces absolute certainty, because such proof is rarely possible. Moral certainty is only required, or that degree of proof which produces conviction in an unprejudiced mind. State v. Reid, 127 M 552, 267 P 2d 986, 990.

Operation and Effect

In a prosecution for the crime of carrying a concealed weapon, wherein the defendant was found guilty by a jury, it was held on appeal that in view of the uncertainty in the mind of the state's only eyewitness as compared with witnesses for defendant, coupled with the effect of this section and section 94-7208, the evidence was not sufficient to justify a conviction for the crime charged. State v. Gilbert, 125 M 104, 232 P 2d 338, 341.

References

Cited or applied in Gaffney v. Industrial Accident Board of Montana, — M —, 287 P 2d 256, 261.

93-301-5. (10492) Four kinds of evidence specified.

Mode of proof of testimony given at former examination, hearing or trial. 11 ALR 2d 30.

93-301-6. (10493) Several degrees of evidence specified.

Bloodhound Testimony

In this state, so-called "bloodhound testimony" is incompetent and inadmissible on the trial of any person accused of a crime. State v. Storm, 125 M 346, 238 P 2d 1161 (two justices dissenting).

93-301-7. (10494) Primary evidence defined.

References

Cited or applied in Cottingham v. Doyle, 122 M 301, 202 P 2d 533.

93-301-10. (10497) Indirect evidence defined.

References

Cited or applied in Gaffney v. Industrial Accident Board of Montana, — M —, 287 P 2d 256, 261.

93-301-11. (10498) Prima facie evidence defined

References

Cited or applied in Whitney v. Northwest Greyhound Lines, 125 M 528, 242 P 2d 257, 270 (dissenting opinion).

Prima facie case where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 ALR 2d 681.

93-301-13. (10500) Satisfactory evidence defined.

References

Cited or applied in State v. Simon, 126 M 218, 247 P 2d 481, 485 (dissenting opinion).

93-301-17. (10504) Corroborative evidence defined.

Divorce: Necessity and sufficiency of corroboration of plaintiff's testimony regarding ground for divorce. 15 ALR 2d 170.

CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF

93-401-1. (10505) One witness sufficient to prove a fact.

Conflicting Evidence

Where there is any substantial evidence to support the findings of the trial court, even though the evidence is conflicting the supreme court will not interfere with the judgment and findings of the trial court. Hankins v. Waitt, 120 M 596, 189 P 2d 666, 667.

Operation and Effect

In deciding the facts of a case the trial judge could accept "the direct evidence of one witness who is entitled to full credit" to prove any fact and he was not bound to decide the facts in conformity with the declarations of any number of witnesses, who did not produce conviction in his mind, against a less number, or against a presumption or other evidence satisfying his mind. Davis v. Burton, — M —, 278 P 2d 213, 218.

References

Cited or applied in Whorley v. Koss, 122 M 446, 206 P 2d 809, 811.

93-401-2. (10506) Testimony confined to personal knowledge.

Report by physician taking or interpreting X-ray pictures. 6 ALR 2d 406.

Written recitals or statements as within rule excluding hearsay. 10 ALR 2d 1035.

93-401-4. (10508) Witness presumed to speak the truth.

Construction

It was error for the trial court to allow the testimony of a witness at the first trial to be read into evidence at the sec-

ond trial of the defendant. It was the right of the defendant to have the jury see and observe the witness upon the witness stand. It was his right that the jury see how the witness acted while under direct and cross-examination. It was his right to have the jury judge the credibility of the witness from his appearance and manner while upon the witness stand. None of these rights could be had except and unless the witness met the defendant "fact to face" in the presence of the jury during the course of the trial. State v. Storm, 127 M 414, 265 P 2d 971, 973. (See, however, the dissenting opinion in 127 M 414, 265 P 2d 971, 975.)

Cases which permit testimony, given by a witness in a first trial, to be read into evidence in a second trial, in the absence of such witness, are based upon the theory that the accused has been present when the witness gave the testimony in the first trial and had the opportunity of then cross-examining such witness. Such cases proceed upon the theory that the observation by the jury of the manner and demeanor of the witness is no essential part of the right of a defendant to meet the witness face to face. Montana subscribes to no such theory. To do so would be to make this section a useless and meaningless thing and would deny the defendant the right to meet the witness against him face to face, a right guaranteed him by Art. III, sec. 16 of the state Constitution. State v. Piveral, 127 M 427, 265 P 2d 969, 970. (See, however, the dissenting opinion in 127 M 427, 265 P 2d 969, 970.)

On a second trial of a defendant the testimony of a state witness given at the first trial could not be read into evidence at the second trial since to do so would be to deprive the defendant of his right to meet a witness face to face. State v. Piveral, 127 M 427, 265 P 2d 969, 970. (See, however, the dissenting opinion in 127 M 427, 265 P 2d 969, 970.)

Operation and Effect

Where there is ample substantial evidence to sustain a jury's verdict the supreme court will not disturb it. Roberts State Bank v. O'Rourke, 121 M 228, 191 P 2d 321.

93-401-7. (10511) Declarations which are a part of the transaction.

Admission Against Interest

Where statements made by defendant tended to incriminate him they were admissible under section 93-401-27 as statements against interest regardless whether or not they were part of the res gestae. State v. Allison, 122 M 120, 199 P 2d 279, 293.

Inability of person making utterance to recollect and narrate facts to which it relates as affecting its admissibility as part of res gestae. 7 ALR 2d 1324.

93-401-10. (10514) Declaration of decedent evidence, etc.

References

Cited or applied in Snook v. Blank, 92 F Supp 518, 519; Hjermstad v. Barkuloo, 128 M 88, 270 P 2d 1112, 1118.

Admissibility of statement accepting responsibility for accident as affected by reference to liability insurance. 4 ALR 2d 781.

93-401-12. (10516) Contents of writing—how proved.

Subd. 5

Operation and Effect

The receiving in evidence of exhibits of one of the counsel of plaintiff which contained figures taken from the books of account kept by plaintiff from which computation was made of the loss of profits to plaintiff by reason of defendant's negligence was proper. McCollum v. O'Neil, — M —, 281 P 2d 493.

The use of memoranda containing computations made from records is proper. This method of getting before the jury the result of the examination of books of account and records is to be commended. McCollum v. O'Neil, — M —, 281 P 2d 493, 497.

In General

This section does not authorize the introduction of parol evidence to show the execution of a deed where the entire deed is in evidence including the printed lines for the signature of the party executing the instrument and also the lines for the notary but no signatures appear thereon and the paper gives no evidence that any signatures ever appeared thereon, although plaintiff claimed that the signatures disappeared while the deed was in the ground for a period of nine years. Miller v. Miller, 121 M 55, 190 P 2d 72, 74.

References

Cited or applied in Cottingham v. Doyle, 122 M 301, 202 P 2d 533.

93-401-13. (10517) An agreement reduced to writing deemed the whole.

Extension of Time—Oral Testimony

Where escrow agreement in connection with sale of land required $700 to be paid by a certain date, oral evidence could not be received to show that there had been an extension of time. Herman v. Herman, 123 M 39, 207 P 2d 1155, 1157.

References

Cited or applied in Potlatch Oil & Refining Co. v. Ohio Oil Co., 96 F Supp 685, 689.

Applicability and effective parol evidence rule as determinable upon the pleadings. 10 ALR 2d 720.

Parol evidence rule as applicable to agreement not to engage in competition with a business sold. 11 ALR 2d 1227.

Parol evidence to show duration of written contract for support or maintenance. 14 ALR 2d 897.

93-401-15. (10519) Construction of statutes and instruments, etc.

Operation and Effect

In construing section 93-901 relating to the disqualification of a judge for bias or prejudice, by the filing of an affidavit, the court may not insert therein any "withdrawal" provisions. In re Woodside-Florence Irr. Dist., 121 M 346, 194 P 2d 241, 245.

A judge should not read the words "grand jury" into section 94-2423 which provides immunity from prosecution to persons testifying before any "court or magistrate." State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023.

This section was enacted to guard against judicial legislation and the usurpation of legislative functions. Wilson v. Wilson, — M —, 278 P 2d 219, 224.

References

Cited or applied in Lindeen v. Liquor Control Board, 122 M 549, 207 P 2d 947; State v. Coloff, 125 M 31, 231 P 2d 343, 346; Bond v. Birk, 126 M 250, 247 P 2d 199, 206; Tabor v. Industrial Acc. Fund, 126 M 240, 247 P 2d 472, 477 (dissenting opinion); Sheridan County Electric Co-op. v. Montana-Dakota Utilities Co., Inc., 128 M 84, 270 P 2d 742, 743; In re Woodburn's Estate, 128 M 145, 273 P 2d 391, 394; Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37; State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 1004; Carlson v. Flathead County, — M —, 293 P 2d 273, 275.

93-401-16. (10520) The intention of the legislature or parties.

Action of County Commissioners

Rules of construction prescribed by this section would be applicable in construing action of board of county commissioners in fixing salary of county officer. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1002.

Operation and Effect

Since the original legislative intent in enacting Laws 1933, Ch. 105, was by Sec. 65 (sec. 4-170) to prohibit billboard or signboard advertising of beer, it cannot be said that the legislature of 1949 in enacting Ch. 209 (sec. 4-102) for the purpose of clarifying the distinction between liquor and beer intended to repeal such prohibition without specifically repealing such provision. Fletcher v. Paige, 124 M 114, 220 P 2d 484, 487, 19 ALR 2d 1108.

References

Cited in McCarten v. Sanderson, 111 M 407, 100 P 2d 1108, 1111, 132 ALR 1220; Carlson v. Flathead County, — M —, 293 P 2d 273, 275.

93-401-17. (10521) The circumstances to be considered.

References

Cited or applied in First Nat. Bank of Plains v. Green Mt. Soil Conservation District, — M —, 293 P 2d 289, 291.

93-401-20. (10524) Persons skilled may testify to decipher characters.

Admissibility of expert testimony as to proximate cause in malpractice cases. 13 ALR 2d 38.

93-401-25. (10529) Evidence confined to material allegations.

Operation and Effect

Where testimony is in conflict it is not reversible error for the court to admit evidence of collateral facts to determine the credibility of the witnesses. O'Sullivan v. Simpson, 123 M 314, 212 P 2d 435.

On cross-examination, questions as to the extent of sweeping done by the witness in performance of his duties at work is collateral and does not affect the credibility of the witness on the vital point that he followed the green truck after weighing it and saw defendants scoop corn from it onto another truck. State v. Keller, 126 M 142, 246 P 2d 817, 819.

Admissibility of evidence, and propriety and effect of questions, statements, comments, etc., tending to show that defendant in personal injury or death action carries liability insurance. 4 ALR 2d 761.

Admissibility in negligence action against bank by depositor, of evidence as to custom of banks in locating and dealing with checks and other items involved. 8 ALR 2d 446.

Use and admissibility of maps, plats and other drawings to illustrate or express testimony. 9 ALR 2d 1044.

93-401-27. (10531) Facts which may be proved on trial.

Subd. 2

Criminal Case

In criminal case, statements of defendant voluntarily made to doctor who was to perform autopsy on deceased were admissible as statements against interest. State v. Allison, 122 M 120, 199 P 2d 279, 293.

Estimate or opinion as to value of personal property having no market value in action for conversion or loss of, or damage to, such property. 12 ALR 2d 935.

Admissibility on question of damages in action for libel or slander, of opinion evidence as to impression or effect of matter upon minds of individuals. 12 ALR 2d 1016.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 976 (dissenting opinion); State v. Piveral, 127 M 427, 265 P 2d 969, 970 (dissenting opinion).

CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

93-501-1. (10532) Certain facts of general notoriety, etc.

Subd. 2

Boundaries of Counties

The courts will take judicial notice of the boundaries of the various counties as established, fixed and defined by sections 16-201 to 16-263 and of the territorial limits of such political subdivisions of the state as such limits are shown and depicted on the official map of the state under section 19-117. State v. Williams, 122 M 279, 202 P 2d 245, 246.

Subd. 3

Acts of an Official

The law presumes that the commissioner of agriculture performed his official duty as required by section 3-218 and that the form of warehouse receipt used and issued by plaintiff is in the form prescribed by law and the rules and regulations of the commissioner of agriculture of which law and official acts the Supreme Court may take judicial notice. Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1085.

Location of City

Where the official highway map shows that the town of Greycliff is ten miles east of Big Timber, on the Yellowstone River the courts will take judicial notice of such facts. State v. Widdicombe, — M —, 301 P 2d 1116, 1118.

References

Cited or applied in In re Hunter's Estate, 125 M 315, 236 P 2d 94, 96.

Judicial notice of federal nature of defendant for purposes of jurisdiction of federal courts. 12 ALR 2d 55.

Judicial notice of changes in cost of living or in purchasing power of money in reviewing damages for personal injuries or death. 12 ALR 2d 611.

Judicial notice as to finger prints, paw prints or bear foot prints. 28 ALR 2d 1119.

93-501-2. Judicial notice of laws of other states.

References

Cited or applied in In re Hunter's Estate, 125 M 315, 236 P 2d 94, 96; In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1088; Malcom v. Stondall Land & Investment Co., — M —, 284 P 2d 258, 260.

93-501-3. Court may inform itself of such laws.

References

Cited or applied in In re Hunter's Estate, 125 M 315, 236 P 2d 94, 96.

93-501-4. Question for court.

References

Cited or applied in In re Hunter's Estate, 125 M 315, 236 P 2d 94, 96.

93-501-5. Notice to adverse party, when required.

Notice

Assuming that the findings of a California court that there was reciprocity between the United States and Rumania was the common law of that state, still before a party invokes the benefits of such foreign law he must give notice to the adverse party of his intention to do so before asking the court to take judicial notice thereof. In re Stoian's Estate, 128 M 52, 269 P 2d 1085, 1088. (Dissenting opinions, 128 M 52, 269 P 2d 1085, 1088, 1089.)

93-501-8. Act, how cited.

Uniform Judicial Notice of Foreign Law Act. 23 ALR 2d 1437.

CHAPTER 601—EVIDENCE—REPORTERS' CONFIDENCE ACT

Section 93-601-2. Disclosure of source of information—when not required.

93-601-2. Disclosure of source of information—when not required. No persons engaged in the work of, or connected with or employed by any newspaper or any press association, or any radio broadcasting station, or any television station for the purpose of gathering, procuring, compiling, editing, disseminating, publishing, broadcasting or televising news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial or investigation before any court, grand jury or petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent or agents, or before any commission, department, division or bureau of the state, or before any county or municipal body, officer or committee thereof.

History: En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951.

Amendment

The 1951 amendment inserted the words "or any radio broadcasting station, or any television station" and "broadcasting or televising."

Repealing Clause

Section 2 of Ch. 56 L. 1951 repealed all acts or parts of acts in conflict therewith.

CHAPTER 701—EVIDENCE—WITNESSES

93-701-1. (10533) Witness defined.

Competency of physician or surgeon from one community to testify in malpractice case as to standard of care required of defendant practicing in another community. 8 ALR 2d 772.

93-701-2. (10534) All persons capable of perceptions, etc.

Testimony of children as to grounds of divorce of their parents. 2 ALR 2d 1329.

93-701-3. (10535) Persons who cannot be witnesses.

Subd. 3

Competency After Testimony of Another

In action on claim against estate for money loaned by daughter to deceased, it was proper, after testimony of witness that she heard plaintiff say, "Could I have the money you owe me, Mother?" to which the mother replied "Yes, I owe you $520 and you will get every cent of it," to permit plaintiff to testify in her own behalf concerning the making of the loan to her mother. Ahlquist v. Pinski, 120 M 355, 185 P 2d 499, 501.

Operation in General

A party to an action to enforce a contract to make a will may not testify as to the facts of direct transactions or oral communications between himself and the deceased, except when, without the testimony of the witness injustice will be done. Cox v. Williamson, 124 M 512, 227 P 2d 614, 619.

Court should not admit testimony of witness who is party to case to enforce agreement alleged to have been made with deceased until sufficient other independent testimony has been admitted to warrant the court, in exercise of its discretion, to render a ruling in favor of such testimony, which discretion must be exercised with caution and reasonable strictness. Cox v. Williamson, 124 M 512, 227 P 2d 614, 619.

Sufficiency of Foundation Evidence

Evidence which tends to establish at most nothing more than an intention on the part of the testator to leave to another a certain sum of money, will not support an allegation of express agreement or contract to do so, so as to permit testimony of plaintiff as to contract made with deceased. Cox v. Williamson, 124 M 512, 227 P 2d 614, 621.

Subd. 4

Operation and Effect

Under the exception to this section, which allows the testimony of a party or assignor "when it appears to the court that without the testimony of the witness injustice will be done" there must first be sufficient other testimony admitted to warrant the court, in the exercise of its discretion to rule in favor of the questionable testimony. Potlatch Oil & Refining Co. v. Ohio Oil Co., 199 F 2d 766.

Under the Montana dead mens statute, the testimony of an assignor of the plaintiff relating to a conversation with one of defendant's officers was properly excluded since the officer of defendant was now dead, nor was it admissible under Rule 43 (a) of the Federal Rules since the witness, a stockholder of plaintiff corporation, was interested in the outcome of the suit. Potlatch Oil & Refining Co. v. Ohio Oil Co., 199 F 2d 766.

References

Cited or applied in O'Sullivan v. Simpson, 123 M 314, 212 P 2d 435; Potlatch Oil & Refining Co. v. Ohio Oil Co., 96 F Supp 685, 688.

Competency of witness as affected by coverage of pardon. 35 ALR 2d 1262.

93-701-4. (10536) Persons in certain relations cannot be examined.

Subd. 1

Testimony by Widow

Objection to testimony by widow as to statements made by deceased spouse was properly overruled where it was shown that deceased did not regard the communications as confidential in that he had made the communications to others beside his wife. Thompson v. Steinkamp, 120 M 475, 187 P 2d 1018, 1021.

Cross-Reference

Testimony of husband or wife in support proceedings, sec. 94-901-18.

Right of one against whom testimony is offered to invoke privilege of communication between others. 2 ALR 2d 645.

Conversations between husband and wife relating to property or business as within rule excepting private communications between them. 4 ALR 2d 835.

"Communications" within testimonial privilege of confidential communications between husband and wife as including knowledge derived from observation by one spouse of acts of another spouse. 10 ALR 2d 1387.

CHAPTER 801—EVIDENCE—UNIFORM BUSINESS RECORDS AS EVIDENCE ACT—UNIFORM PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Section 93-801-5. Reproductions of originals.
93-801-6. Interpretation of act.

93-801-1. "Business" defined.

Verification and authentication of slips, tickets, bills, invoices, etc., made in regular course of business, under the Uniform Business Records as Evidence Act, or under similar "Model Acts." 21 ALR 2d 773.

93-801-2. Proof of business records.

Operation and Effect

The reports on an accountant, who was hired to do accounting for the company while it was a going concern, were admissible in evidence. McGrath v. Dubs, 127 M 101, 257 P 2d 899, 905.

93-801-4. Act, how cited.

What constitutes books or original entry within rule as to admissibility of books of account. 17 ALR 2d 235.

93-801-5. Reproductions of originals. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding, whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence, if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

History: En. Sec. 1, Ch. 100, L. 1953.

Compiler's Note

The Uniform Photographic Copies of Business and Public Records as Evidence Act has been adopted by Alabama, Alaska, California, Florida, Georgia, Hawaii, Idaho, Iowa, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Virginia, Washington and Wisconsin.

Title of Act

An act relating to the preservation of business and public records by the preparation of photographic copies thereof, providing that the originals thereof may be destroyed under certain conditions and that such copies may be used in place of the original.

93-801-6. Interpretation of act. This act shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it.

History: En. Sec. 2, Ch. 100, L. 1953.

Repealing Clause

Section 3 of Ch. 100, Laws 1953 repealed all acts or part of acts inconsistent with the provisions of this act.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

93-1001-8. (10546) Written law defined.

References

Cited or applied in In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 661.

Use and admissibility of maps, plats and other drawings to illustrate or express testimony. 9 ALR 2d 1044.

93-1001-9. (10547) Constitution and statutes.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; Bond v. Birk, 126 M 250, 247 P 2d 199, 206; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 703; In re Kay's Estate, 127 M 172, 260 P 2d 391, 394; State ex rel. Burns v. Lacklen, — M —, 284 P 2d 998, 1004.

93-1001-11. (10549) Unwritten law defined.

References

Cited or applied in In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 661; In re Spoya's Estate, — M —, 282 P 2d 452, 455.

93-1001-14. (10552) Other evidence of laws of other states.

Operation and Effect

Under this section it was proper for a foreign law expert to testify as to reciprocity between this country and a foreign country in regard to inheritance rights of the citizens. In re Spoya's Estate, — M —, 282 P 2d 452, 454.

References

Cited or applied in In re Gaspar's Estate, 128 M 383, 275 P 2d 656, 661.

93-1001-19. (10557) Copy of a foreign record—when evidence.

Operation and Effect

Certified copies of decisions of district courts, containing the seal of the court properly authenticated and in substantial compliance with this section, showing in substance that in the cases under consideration American citizens either inherited property from the estate of one dying in Yugoslavia or the decisions otherwise respected property rights of American citizens in property in Yugoslavia were properly received in evidence to show reciprocity. In re Spoya's Estate, — M —, 282 P 2d 452, 456.

93-1001-29. (10567) The jurisdiction necessary in a judgment.

References

Gans & Klein Invest. Co. v. Sanford et al., 91 M 512, 521, 8 P 2d 808.

93-1001-32. (10570) Entries in official books prima facie evidence.

Location of City

Where official highway map shows that the town of Greycliff is ten miles east of Big Timber on the Yellowstone River the courts will take judicial notice of such facts. State v. Widdicombe, — M —, 301 P 2d 1116, 1118.

Reports of Livestock Inspector

Reports made by the livestock inspector pursuant to section 3324, Revised Codes 1935 (Repealed Ch. 59, Laws 1943. See section 46-802) were admissible in evidence as public records. Smith v. Armstrong, 121 M 377, 198 P 2d 795, 800.

93-1001-38. (10576) Entries made by officers or boards, etc.

Reports of Livestock Inspector

Reports made by the livestock inspector pursuant to section 3324, Revised Codes 1935 (Repealed Ch. 59, Laws 1943. See section 46-802) were admissible in evidence as public records. Smith v. Armstrong, 121 M 377, 198 P 2d 795, 800.

CHAPTER 1101—EVIDENCE—PRIVATE WRITINGS

93-1101-12. (10588) Writings—how proved.

Sufficiency of Evidence

Where one of witnesses testified that signature on note was that of defendant and identified the note, it was sufficient

to admit the note in evidence. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 377.

Where witness testified that he made the writing, that he signed it as a party thereto and that he saw the other party sign it, and another witness testified as to the genuineness of such other party's signature, there was sufficient evidence to show execution and make the writing admissible in evidence. Cottingham v. Doyle, 122 M 301, 202 P 2d 533.

93-1101-14. (10591) Evidence of handwriting.

Cross-Reference

See annotation to section 93-1101-12. Betor v. Chevalier, 121 M 337, 193 P 2d 374, 377.

CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS

93-1301-2. (10601) Inference defined.

Instructions

An instruction containing an abstract statement of the statutory law as set out in this section and sections 93-1301-3, 93-1301-4 is not error when the facts are few and simple. Gobel v. Rinio, 122 M 235, 200 P 2d 700, 705.

In an action for damages resulting from negligence in driving automobile an instruction touching upon the usual propensities or passions of man when there was no evidence touching on such subject, was harmless, if error. Gobel v. Rinio, 122 M 235, 200 P 2d 700, 705.

References

Cited or applied in Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 595.

Admissibility of evidence as to financial condition of debtor on issue as to payment of debt. 9 ALR 2d 205.

93-1301-3. (10602) Presumption defined.

Cross-Reference

See note to sec. 93-1301-3. Gobel v. Rinio, 122 M 235, 200 P 2d 700, 705.

Operation and Effect

Where the defendant motor fuel carrier, while delivering gasoline to a filling station allowed some gas to escape, and as a result of such escape the gas was ignited and a fire resulted which destroyed the filling station, the doctrine of res ipsa loquitur can be relied upon by the plaintiff for damages resulting from the destruction of his filling station. Harding v. H. F. Johnson, Inc., 126 M 70, 244 P 2d 111.

Conveyance of lot with reference to map or plat as creating presumption of right in nonabutting indicated streets, alleys or areas. 7 ALR 2d 607.

93-1301-4. (10603) When an inference arises.

Cross-Reference

See note to sec. 93-1301-2. Gobel v. Rinio, 122 M 235, 200 P 2d 700, 705.

Operation and Effect

This statute makes no distinction between "a fact legally proved" by direct evidence and "a fact legally proved" by circumstantial evidence. A fact, although arrived at by indirect or circumstantial evidence, may serve as a basis for an inference. Fegles Const. Co. v. McLaughlin Const. Co., 205 F 2d 637, 639.

References

Cited or applied in Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 595.

93-1301-5. (10604) Presumptions may be controverted, when.

Overcoming presumption of owner's consent to operation of automobile by another. 5 ALR 2d 196.

93-1301-6. (10605) Specification of conclusive presumptions.

Subd. 3

Statements not Creating Estoppel

Where lessee of property with option to purchase sued for specific performance he could not be estopped from exercising his option by testimony of statements made by lessee to lessor and prospective purchaser of property from lessor, prior to time for exercise of option, that he did not intend

to purchase the property if he could get certain other property he had in mind. Fiers v. Jacobson, 123 M 242, 211 P 2d 968, 973.

In action by church members to set aside a deed executed by certain persons purporting to act as trustees, they could not be estopped by statements by one of their number proposing that the church property be sold. Smith v. St. John Baptist Church, 123 M 264, 211 P 2d 975, 978.

Subd. 4

Operation and Effect

Where land was purchased by defendant and leased to plaintiff, plaintiff should not be permitted to claim that the purchase price of the land constituted a loan from defendant to plaintiff and that deed was made to defendant as security for the loan and therefore defendant held the land in trust for plaintiff. Laas v. All Persons, 121 M 43, 189 P 2d 670 (concurring opinion).

References

Cited in In re Minder's Estate, 128 M 1, 270 P 2d 404, 414; Gaffney v. Industrial Accident Board of Montana, — M —, 287 P 2d 256, 258.

93-1301-7. (10606) All other presumptions may be controverted. * * * 40. [Repealed.]

Repeal

Paragraph 40 of this section was repealed by Sec. 9, Ch. 20, L. 1951 (the Uniform Simultaneous Death Act compiled as secs. 91-423 to 91-430).

Subd. 3

Operation and Effect

A person instituting a criminal proceeding for passing a fraudulent check intends to vex, annoy and injure such person within the meaning of the word malice in section 19-103. Rickman v. Safeway Stores, Inc., 124 M 451, 227 P 2d 607, 610.

Subd. 15

Acts of an Official

The law presumes that the commissioner of agriculture performed his official duty as required by section 3-218 and that the form of warehouse receipt used and issued by plaintiff is in the form prescribed by law and the rules and regulations of the commissioner of agriculture of which law and official acts this court may take judicial notice. Northern Montana Mustard Growers Co-op. v. Britton, — M —, 280 P 2d 1078, 1085.

References

Cited or applied in Whitney v. Northwest Greyhound Lines, 125 M 528, 242 P 2d 257, 264, 266 (dissenting opinion).

Presumption with respect to succession or estate taxes affecting estates by entirety and other joint estates. 1 ALR 2d 1146.

Presumption and burden of proof as to nonrevocation of lost will. 3 ALR 2d 952, 957.

Overcoming inference or presumption of driver's agency for owner, or latter's consent to operation, of automobile. 5 ALR 2d 196.

Relationship between party and witnesses as giving rise to or affecting presumption for inference from failure to produce or examine witness. 5 ALR 2d 893.

Presumption as to value of corporate stock or bonds. 6 ALR 2d 189.

Presumption of gratuity as to services rendered by member of household or family other than spouse without express agreement for compensation. 7 ALR 2d 8.

Presumption of negligence of carrier in leaving open door through which passenger steps or falls. 7 ALR 2d 1427.

Presumptions as to unadjudged incompetency which prevents running of statute of limitations. 9 ALR 2d 967.

Presumptions and inferences as to power of president of corporation to have litigation instituted by it, where express authorization by board of directors is not shown. 10 ALR 2d 710-713.

Proof of death from injury from external and violent means as supporting presumption or inference of death by accidental means within policy of insurance. 12 ALR 2d 1264.

Presumptions and burden of proof or of evidence where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 ALR 2d 681.

Presumption as to validity of second marriage. 14 ALR 2d 7.

Presumptions concerning damages in action for personal injury resulting in death of infant. 14 ALR 2d 514.

Presumption of undue influence in nontestamentary gift to clergyman, spiritual adviser, or church. 14 ALR 2d 653.

Presumption as to what would be to child's best interest in case involving nonresident's right to custody of child. 15 ALR 2d 463.

Presumption of foreign naturalization for expatriation purposes. 15 ALR 2d 572.

CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN AGREEMENTS—CONCLUSIVE—UNANSWERABLE

93-1401-3. (10609) Will to be in writing.

Operation and Effect

A power of attorney to a physician to perform all medical services for decedent for which he was to receive $2,000, any portion of such amount unpaid on her death to be paid by her executor, was invalid unless executed in compliance with this section. Trenouth v. Mulroney, 124 M 499, 227 P 2d 590, 597.

93-1401-5. (10611) Transfer of real property to be in writing.

Parol Evidence

Where quitclaim deed was typewritten on printed form which contained lines for the signatures and the acknowledgment but the paper showed no evidence that any name had ever been signed thereto or any notary's seal attached, it could not be shown by parol evidence that the deed was actually signed. Miller v. Miller, 121 M 55, 190 P 2d 72, 75.

References

Cited in Hankins v. Waitt, 120 M 596, 189 P 2d 666; Fiers v. Jacobson, 123 M 242, 211 P 2d 968, 970; Cleveland-Arvin v. Cleveland, 123 M 463, 215 P 2d 963.

93-1401-7. (10613) Agreement not in writing—when invalid.

Memorandum

An endorsed bank check with the additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. Lewis v. Peterson, 127 M 474, 267 P 2d 127, 128.

"Party Charged"

The "party to be charged" means the party to be charged in the particular suit. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 707.

Presumption of Writing

The law will presume that a contract was in writing in the absence of any statement to the contrary. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 706.

Sufficiency of Complaint

Where complaint shows on its face that memorandum of agreement does not contain all essentials of agreement and such essentials cannot be ascertained without resort to oral evidence, demurrer to complaint was properly sustained. Dineen v. Sullivan, 123 M 195, 213 P 2d 241.

Although a contract to be valid must be in writing, that fact is a matter of proof and need not be alleged in the pleading. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 706.

Sufficiency of Memorandum

The memorandum must contain all the essentials of the contract but if the material elements are stated in general terms all the details or particulars need not be stated. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 707.

References

Cited or applied in Hankins v. Waitt, 120 M 596, 189 P 2d 666; Herman v. Herman, 123 M 39, 207 P 2d 1155, 1157.

Sale of contractual rights; defect in written record as ground for avoiding sale. 10 ALR 2d 728.

CHAPTER 1501—EVIDENCE—PRODUCTION OF—SUBPOENAS

Section 93-1501-7. When a witness is not compelled to attend.

93-1501-1. (10616) Evidence to be produced, by whom.

Operation and Effect

Where a plaintiff may be aided by a permissive inference as prima facie support of her contention, her opponent need do no more than counter-balance such permissive inference or prima facie case; he is not required to overbalance or outweigh it and when the whole of the evidence upon the issue involved leaves the case in equipoise, the one affirming on whom rests the burden must lose. Whitney v. Northwest Greyhound Lines, 125 M 528, 242 P 2d 257, 264, 265 (dissenting opinion).

Under this section the party asserting a right in any case has the burden of proving each of the material allegations of his cause of action. McDonald v. Peters, 128 M 241, 272 P 2d 730, 731.

Partition suit, burden of proof as regards alleged prior voluntary partition of property. 1 ALR 2d 473.

Burden of proof with respect to succession or estate taxes affecting estates by entirety and other joint estates. 1 ALR 2d 1146.

Burden of proof as to change of beneficiary of national service life insurance. 2 ALR 2d 509.

Burden of proof as to nonrevocation of lost will. 3 ALR 2d 952, 957.

Burden of proof as to reasonableness of amount of funeral expenses. 4 ALR 2d 1021.

Burden of proof as to unadjudged incomeptency which prevents running of statute of limitations. 9 ALR 2d 967.

Burden of proof as to exception in insurance policy as to loss or damage caused by dishonesty of employee. 12 ALR 2d 236.

Burden of proving actual damage from conversion or loss of, or damage to, personal property having no market value. 12 ALR 2d 909.

Burden of proof where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 ALR 2d 681.

Burden of proof as to cause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics. 13 ALR 2d 1013.

Burden of proof in unemployment compensation cases involving leaving employment or unavailability for particular job or duties, because of sickness or disability. 14 ALR 2d 1311.

Burden of proof as to what would be to child's best interest in case involving nonresident's right to custody of child. 15 ALR 2d 463.

Burden of proof or justification in action against landowner for killing or injuring trespassing dog. 15 ALR 2d 578.

Burden of proof in action against owner or bailor of horse for injuries by horse to hirer or bailee thereof. 15 ALR 2d 1331.

93-1501-3. (10618) **Subpoena for witness defined.**

References

Cited or applied in State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1001.

93-1501-7. (10622) **When a witness is not compelled to attend.** A witness is not obliged to attend as a witness before any court, judge, or justice, or any other officer, out of the county in which he resides, unless the distance be less than one hundred [100] miles from his place of residence to the place of the trial.

History: En. Sec. 325, p. 111, Bannack Stat.; amd. Sec. 380, p. 212, L. 1867; re-en. Sec. 454, p. 127, Cod. Stat. 1871; re-en. Sec. 633, p. 204, L. 1877; re-en. Sec. 633, 1st Div. Rev. Stat. 1879; re-en. Sec. 654, 1st Div. Comp. Stat. 1887; re-en. Sec. 3304, C. Civ. Proc. 1895; re-en. Sec. 7978, Rev. C. 1907; re-en. Sec. 10622, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1949. Cal. C. Civ. Proc. Sec. 1989.

Amendment

The 1949 amendment substituted "one hundred miles" for "thirty miles."

Repealing Clause

Section 2 of Ch. 113, L. 1949 repealed all acts and parts of acts in conflict therewith.

93-1501-8. (10623) **Person present compelled to testify.**

Form, particularity, and manner of designation required in subpoena duces tecum for production of corporate books, records, and documents. 23 ALR 2d 862.

CHAPTER 1801—EVIDENCE—DEPOSITIONS, HOW TAKEN WITHIN AND WITHOUT THE STATE

Section 93-1801-4. Testimony of witness out of the state taken upon commission issued under seal, upon notice—to whom to issue.

93-1801-4. (10646) **Testimony of witness out of the state taken upon commission issued under seal, upon notice—to whom to issue.** The deposition of a witness out of this state may be taken upon the commission issued from the court, under the seal of the court, upon an order of the

court, or a judge thereof, on the application of either party, upon five [5] days' previous notice to the other. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace, or commissioner, or notary public, selected by the court or judge issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

History: Ap. p. Sec. 346, p. 115, Bannack Stat.; amd. Sec. 408, p. 217, L. 1867; amd. Sec. 482, p. 132, Cod. Stat. 1871; amd. Sec. 1, p. 49, L. 1874; amd. Sec. 661, p. 211, L. 1877; re-en. Sec. 661, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 49, L. 1883; re-en. Sec. 683, 1st Div. Comp. Stat. 1887; en. Sec. 3350, C. Civ. Proc. 1895; re-en. Sec. 8002, Rev. C. 1907; re-en. Sec. 10646, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1953. Cal. C. Civ. Proc. Sec. 2024.

Amendment

The 1953 amendment added the words "or notary public" in the second sentence.

Effective Date

Section 2 of Ch. 9, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 6, 1953.

References

Cited or applied in Schuster v. Northern Co., 127 M 39, 257 P 2d 249, 253.

Admissibility of deposition of child of tender years. 30 ALR 2d 771.

93-1801-12. (10654) A deposition once taken may be read at any time.

Operation and Effect

Where a plaintiff offers a deposition in evidence, he is not bound by such evidence in the sense that he may not offer evidence that conflicts with it and have all the evidence considered by the jury. McCollum v. O'Neil, — M —, 281 P 2d 493, 496.

CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

93-1901-2. (10660) Witness not under examination may be excluded.

Discretion of Court

The matter of excluding witnesses rests in the discretion of the trial court and the supreme court will not disturb the action of the trial court in the absence of a showing of prejudice. Smith v. Armstrong, 121 M 377, 198 P 2d 795, 799.

93-1901-3. (10661) Court may control mode of interrogation.

Limitation of Re-examination

Where re-direct examination did not elicit any new matters court did not err in denying the defendant an opportunity for re-cross-examination. State v. McSloy, 127 M 265, 261 P 2d 663, 666.

Operation and Effect

Under this section and section 93-401-25, the trial court may control the cross-examination of witnesses. State v. Keller, 126 M 142, 246 P 2d 817, 819.

93-1901-7. (10665) Cross-examination, as to what.

Cross-examination as to Matters Stricken from the Records

There is no merit to the defendant's contention that she was unduly restricted in the cross-examination of a witness when she was not permitted to examine the witness as to what he had testified to in the morning because it was ordered stricken from the record. The defendant was permitted to examine the defendant as to what occurred during the trip which was what the morning examination of the witness had been about. State v. Robuck, 126 M 302, 248 P 2d 817.

Cross-examination of witness in criminal case as to whether, and with whom, he has talked about or discussed the facts of the case. 35 ALR 2d 1045.

Right to examine witness as to his place of residence. 37 ALR 2d 737.

93-1901-8. (10666) Party producing witness, how far may impeach, etc.

Impeachment of witness by evidence or inquiry as to arrest, accusation, or prosecution. 20 ALR 2d 1421.

93-1901-10. (10667) Witness, how examined—when re-examined.

Limitation of Re-examination

Where re-direct examination did not elicit any new matters court did not err in denying the defendant an opportunity for re-cross-examination. State v. McSloy, 127 M 265, 261 P 2d 663, 666.

93-1901-11. (10668) How impeached.

Improper Method of Impeachment

Defendant was deprived of a substantial right, the right to object to questions and answers which were collateral, immaterial and prejudicial, when a fourteen page document was introduced and accepted in evidence over defendant's objection, which document contained some matters which were collateral, immaterial and prejudicial although some of the statements were proper impeaching evidence. By accepting the entire document, the defendant was prevented from excluding immaterial and collateral matters. State v. Deeds, 126 M 38, 243 P 2d 314.

Particular Wrongful Acts Not Admissible

In a prosecution for rape, evidence tending to show that the defendant had committed rape upon another woman at some prior time was inadmissible as tending to establish a systematic scheme or plan, or connecting the defendant with the crime charged. Such evidence only tended to show bad character and disposition and if the defendant introduced no evidence of his good reputation, such evidence is clearly inadmissible. State v. Sauter, 125 M 109, 232 P 2d 731, 733.

Prejudicial and Incompetent Questions

Where the county attorney continually asked one of defendant's character witnesses about how many times he had been in jail in different counties it was not proper questioning and it cannot be said that a defendant has had a fair and impartial trial where the prosecutor continually asks the defendant or his witnesses prejudicial and incompetent questions. State v. Toner, 127 M 283, 263 P 2d 971, 975.

Proper Method to Impeach

Where a defendant takes the stand and upon cross-examination admits his prior convictions, the purpose of the statute was served, weakening his credibility as a witness. To go further and introduce the judgment showing such prior convictions serves no good purpose and it is prejudicial error to admit it. State v. Coloff, 125 M 31, 231 P 2d 343, 344.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1063 (dissenting opinion).

93-1901-12. (10669) Same—by evidence of declarations.

Testimony in Juvenile Court may be Used for Impeachment of Juvenile as a Witness

Section 10-611, which prohibits the "disposition of a child or any evidence given in the juvenile court being used as evidence against the child in any other case or proceeding," applies only when the child is a party to a later proceeding. Prior contradictory statements made in the juvenile court may be admitted when the juvenile is a witness in a later proceeding for the purpose of impeachment. State v. Searle, 125 M 467, 239 P 2d 995, 997, 998.

93-1901-13. (10670) Evidence of good character—when allowed.

Action for Slander

In action for slander where complaint alleged that manager of drug store stopped plaintiff in front of store and "maliciously intending to injure the good name and character of plaintiff" accused her of stealing an article from the store and that "by means of said defamatory words the plaintiff has been greatly injured in her good name and character" and answer was general denial and affirmative defense containing defendant's allegations of what had taken place, there was no issue raised of plaintiff's character so as to permit plaintiff to introduce evidence of her honesty and integrity. Meinecke v. Skaggs, 123 M 308, 213 P 2d 237.

Military record or discharge from army or navy as evidence to show character or reputation. 9 ALR 2d 606.

CHAPTER 20—EVIDENCE, EFFECT OF

93-2001-1. (10672) Jury judges of effect of evidence, etc.

Subd. 2

Operation in General

In deciding the facts of a case the trial judge could accept "the direct evidence of one witness who is entitled to full credit" to prove any fact and the trial judge was not bound to decide the facts in conformity with the declarations of any number of witnesses, who did not produce conviction in his mind, against a less number, or against a presumption or other evidence satisfying his mind. Davis v. Burton, — M —, 278 P 2d 213, 218.

Subd. 3

All Parts of Testimony Not Necessarily Rejected

Although court was satisfied that testimony on one point was deliberately false, it would only furnish grounds for distrusting other parts of the witness's testimony and would not necessarily call for a rejection of all of it. Sanders v. Sanders, 124 M 595, 229 P 2d 164, 166.

Subd. 4

Instructions Based on This Subdivision

Where the defense requested instructions as to the effect of accomplice's testimony and there was evidence in the record from which the jury might have concluded that a deputy sheriff was an accomplice of the defendant, the court should have instructed the jury that if they believed the deputy sheriff was an accomplice then they must weigh his evidence as provided by this section and that such evidence must be corroborated as required by section 94-7220. State v. Porter, 125 M 503, 242 P 2d 984, 990.

Subd. 5

Burden of Proof

In an action to cancel and terminate a lease, the burden was on the plaintiffs to prove, by a preponderance of the evidence, that the defendants had violated the lease as charged in the complaint. Davis v. Burton, — M —, 278 P 2d 213, 218.

References

Cited in Wood v. Jaeger, 128 M 235, 272 P 2d 725, 727; McDonald v. Peters, 128 M 241, 272 P 2d 730, 731.

Propriety of instruction mentioning or suggesting specific sum as damages in death action. 2 ALR 2d 454.

Modern view as to propriety and correctness of instructions referable to maxim "falsus in uno, falsus in omnibus." 4 ALR 2d 1077.

Propriety of instructions in will contest defining natural objects of testator's bounty. 11 ALR 2d 731.

Instruction requiring or permitting consideration of changes in cost of living or in purchasing power of money in fixing damages. 12 ALR 2d 611.

CHAPTER 2101—EVIDENCE—WITNESSES—RIGHTS AND DUTIES

93-2101-3. (10675) Right of witnesses to protection.

Depositions

Under order to perpetuate testimony by taking depositions, it is not proper for attorney to request that witness have books, papers and accounts which might throw light on the facts expected to be proved. State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1000.

CHAPTER 2201—EVIDENCE—RULES IN PARTICULAR CASES

93-2201-3. (10682) Objections to tender must be specified.

When Tender Unnecessary

In action for specific performance by lessee having option to purchase real property, tender could not be objected to where it was evident that defendants would not have conveyed property no matter what was done in the way of a tender and no objection was made to the tender at the time it was made. Fiers v. Jacobson, 123 M 242, 211 P 2d 968, 974.

93-2201-5. (10684) Compromise offer of no avail.

Evidence Inadmissible

Evidence of compromise negotiations should not be admitted. Gamble-Skogmo, Inc. v. McNair Realty Co., 98 F Supp 440.

Operation and Effect

An "offer to do equity" in the answer when not accepted can not be used in evidence nor can it be regarded as an admission that defendants had waived any of their defenses. Rachou v. McQuitty, 125 M 1, 229 P 2d 965, 970.

CHAPTER 2301—EVIDENCE—PROCEEDINGS TO PERPETUATE TESTIMONY

93-2301-1. (10686) Evidence may be perpetuated.

Objection to Order

Where order of court on application to perpetuate testimony was complained of the remedy was to apply to the court to vacate or modify the order under section 93-8405 and not by direct application to the supreme court for a writ of certiorari. State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1001; State ex rel. Lichte v. District Court, 121 M 34, 189 P 2d 1004, 1008.

Purpose

An application under this statute must be made in good faith for the purpose of obtaining, preserving and using material testimony. State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1000.

93-2301-2. (10687) Manner of application for order.

Issue to be Shown

Where a deposition is to be taken an issue should be tendered by the affidavit, application or complaint, sufficiently definite to disclose that the testimony sought is relevant and pertinent to the framed or proposed issue. State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1001.

Request for Papers

Under order to perpetuate testimony by taking depositions, it is not proper for attorney to request that witness have books, papers and accounts which might throw light on the facts expected to be proved. State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1000.

93-2301-4. (10689) Manner of taking the deposition.

Production of Records

Where no subpoena duces tecum has been issued witness named in application for perpetuation of testimony cannot be compelled to bring before the magistrate the records, books and papers. State ex rel. Woodard v. District Court, 120 M 585, 189 P 2d 998, 1001.

93-2301-6. (10691) When the evidence may be produced.

Operation and Effect

Deposition may only be taken where the application therefor is made in good faith for the purpose of obtaining, preserving and using material testimony. State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

Petition for Deposition

Where a petition for the taking of a deposition is barren of any allegation that it is sought for the purpose of perpetuating his testimony or that it is sought for use at a contemplated trial in the event that such person at that time would be unable to give testimony, and in fact the petition shows that it is for the purpose of ascertaining the financial capabilities of the party, it should be denied. State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

Privilege Against Self Incrimination

Where petition for deposition alleges facts which show that the person whose testimony is desired could be charged with a felony; to compel the person to so testify would be a violation of sec. 18, Art. 3 of the Constitution. State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539. (Dissenting opinion, 128 M 445, 277 P 2d 536, 540.)

CHAPTER 2501—QUESTIONS OF FACT AND LAW—DECISION OF

93-2501-1. (10698) Questions of fact to be decided by the jury, etc.

References

Cited in Wood v. Jaeger, 128 M 235, 272 P 2d 725, 727; McDonald v. Peters, 128 M 241, 272 P 2d 730, 731.

Increase of risk for manufacture or sale of intoxicating liquor as question of fact. 2 ALR 2d 1163.

Contributory negligence failing to comply with statute regulating travel by pedestrian along highway as question for the jury. 4 ALR 2d 1258.

Question for jury as to liability of building or construction contractor for injury or damage to third person occurring after completion and acceptance of the work. 13 ALR 2d 191.

Question for court or jury as to clause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics. 13 ALR 2d 1014.

Shipper's intent to ratify carrier's unauthorized delivery or misdelivery as question of law or fact. 15 ALR 2d 812.

93-2501-2. (10699) Questions of law addressed to the court.

Judicial Notice

The jury, as part of the court, may take notice of the general geography of Montana and of the boundaries and limits of the various political subdivisions of the state. State v. Williams, 122 M 279, 202 P 2d 245, 246.

REVISED CODES OF MONTANA

VOLUME 8

1957 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME THROUGH VOLUME 301, PACIFIC REPORTER (2ND SERIES)

Edited by

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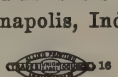
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For index see pocket supplement to Volume 9

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100. Justices' and police court proceedings—appeals, 94-100-25.
901. Reciprocal enforcement of support, 94-901-1 to 94-901-18.

CHAPTER 1—DEFINITIONS AND PRELIMINARY PROVISIONS

94-107. (10716) **Proceedings to impeach or remove officers, etc.**

References

Cited in State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-114. (10723) **Felony and misdemeanor defined.**

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-116. (10725) **Punishment of misdemeanor, etc.**

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-119. (10728) **Drunkenness no excuse for crime, etc.**

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); State v. Zumwalt, — M —, 291 P 2d 257, 261.

CHAPTER 2—PERSONS LIABLE TO PUNISHMENT—PARTIES TO CRIME

94-201. (10729) **Who are capable of committing crimes.**

Instructions

Refusal to give instruction under subd. 6 of this section was not reversible error in view of other instructions given. State v. Allison, 122 M 120, 199 P 2d 279, 289.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); State v. Smith, 126 M 124, 246 P 2d 227, 228.

94-204. (10732) Who are principals.

Instructions

Where a verbal declaration of one codefendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-6423, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. State v. Keller, 126 M 142, 246 P 2d 817, 821.

Operation and Effect

Under this section and section 94-6423, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. State v. Simon, 126 M 218, 247 P 2d 481, 484.

References

Cited or applied in State v. Phillips, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 3—ABANDONMENT AND NEGLECT OF WIFE AND CHILDREN

94-301. (11017) Abandonment or failure to support wife and children, etc.

References

Cited or applied in State v. McBane, 128 M 369, 275 P 2d 218, 221.

94-302. (11018) Orders which may be entered by the court.

Cross-Reference

Enforcement of support orders of other states, secs. 94-901-1 to 94-901-18.

References

Cited or applied in State v. McBane, 128 M 369, 275 P 2d 218, 219, 221.

94-304. (11020) Desertion or abandonment of children a felony, etc.

Change of Plea of Guilty

Where defendant was charged with desertion of minor children and upon arraignment the defendant indicated that he wanted to plead guilty and court read him this section making it a felony to desert and abandon children under 15 years of age, and also sections 94-301 and 94-302 which make it a misdemeanor to omit without lawful excuse to furnish necessary board, clothing, shelter or medical attention to children under the age of 16 years, the court abused its discretion in refusing to grant the defendant's motion to change his plea of guilty since there was a misunderstanding as to what the defendant pleaded guilty. State v. McBane, 128 M 369, 275 P 2d 218. (Dissenting opinion, 128 M 369, 275 P 2d 218, 222.)

94-306. (11022) Cruelty to children.

Failure to provide medical attention for child as criminal negligence. 12 ALR 2d 1047.

CHAPTER 4—ABORTION

94-401. (11023) Administering drugs, etc., with intent to, etc.

Admissibility of evidence of commission of similar crimes in prosecution based on abortion. 15 ALR 2d 1080.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts. 16 ALR 2d 949.

CHAPTER 6—ASSAULTS

94-601. (10976) Assault in the first degree defined—penalty.

Criminal Intent

The element of felonious intent in every contested criminal case must necessarily be determined from the facts and circumstances of the particular case, this for the reason that criminal intent, being a state of mind, is rarely susceptible of direct or positive proof and therefore must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence. State v. Madden, 128 M 408, 276 P 2d 974, 978.

Operation and Effect

In a prosecution for assault in the first or second degree the prosecution had to prove by satisfactory evidence, that when the defendant pointed a gun at a person he intended to commit a felony upon that person; instructions defining the felony must be given to the jury so that the jury can determine if the evidence showed such intended felony. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059 (the court was not in agreement on this however, see the dissenting opinions of two judges on pages 1060, 1063).

References

Cited or applied in State v. Smith, 126 M 124, 246 P 2d 227, 228.

Indecent proposal to woman as criminal assault. 12 ALR 2d 971.

94-602. (10977) Assault in second degree.

Instructions on This Section

Instructions defining the felony intended to be committed must be given to the jury in a prosecution of assault in the first or second degree so that the jury may determine if the evidence showed an intended felony. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059.

Subd. 4

Operation and Effect

Evidence was insufficient to justify a conviction of second degree assault with a deadly weapon where it was disclosed that the defendant was hunting jack rabbits at the time; that he never knew the prosecuting witness prior to the day of the alleged assault; that the rifle was extremely sensitive and would fire upon being brushed against an object such as clothing or even a change in temperature might fire the gun; and that the defendant was an instructor in firearms in the army during the war and would not have missed from the distance of eight feet had he been aiming at the prosecuting witness. State v. Smith, 126 M 124, 246 P 2d 227, 228.

Evidence was sufficient to justify a conviction under this section when it was shown that defendant was with a group of boys who fired a barrage of shots at a house and some of the pellets hit the house; the fact that the prosecuting witness had moved to a position away from the line of fire did not prevent the attack from being an assault upon him and sustained the charge that the guns were fired toward him and in his direction. State v. Simon, 126 M 218, 247 P 2d 481, 482, 483, 484.

Proof of Offense Different Than That Charged

Where defendant was charged with assault in the second degree as defined in subd. 4, it was error to introduce evidence that the defendant in pointing the firearm was resisting a lawful arrest by the sheriff in violation of subd. 5. State v. Storm, 124 M 102, 220 P 2d 674, 675.

Sufficiency of Evidence

Where evidence did not show that defendant pointed gun at sheriff after he was handed paper by deputy which purported to be a warrant, evidence was insufficient to support a conviction under either subd. 4 or 5 of this section. State v. Storm, 124 M 102, 220 P 2d 674, 678.

Sufficiency of Information

Information charging defendant with unlawfully threatening another by pointing a loaded revolver at him charged a criminal offense. State v. Storm, 124 M 102, 220 P 2d 674, 675.

References

Cited or applied in State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539.

94-603. (10978) Assault in third degree.

Instructions

It was error to refuse defendant's instructions defining assault in the third degree, and instead instructing the jury as to assault in the first and second degree but omitting any instructions defining what felony was intended to be committed by assaulting a person with a gun. Since the jury had no way of knowing what felony, if any, the defendant

intended to commit upon a person by pointing a gun at him, the jury should have been allowed to consider whether or not defendant was guilty of third degree assault. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059.

94-605. (10980) Use of force not unlawful.

Subd. 3

Operation and Effect

Evidence failed to justify a conviction of assault with a deadly weapon when it was shown that the defendant was merely exercising force in defense of his home, inasmuch as the prosecuting witness came to defendant's cabin in the company of another fellow who had intruded in defendant's home and lived there without defendant's permission and who the defendant had to forcibly evict, and also someone had been stealing log poles from the defendant. State v. Nickerson, 126 M 157, 247 P 2d 188, 192, 193.

CHAPTER 7—BIGAMY AND INCEST

94-705. (11029) Incest.

Amendment of Information

There was no substantial change in the charge where the court allowed the state to amend an information charging defendant with incest by changing "fornication" to "adultery." Whether the defendant was married and unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. State v. Kuntz, — M —, 295 P 2d 707, 710.

CHAPTER 8—BRIBERY AND CORRUPTION

94-804. (10856) Improper attempts to influence jurors, referees, etc.

Operation and Effect

Where the evidence discloses that the defendant conversed with a grand juror privately at the latter's home it can not be construed to be in the regular course of proceedings and thus within the exception to this section. State v. Porter, 125 M 503, 242 P 2d 984, 990.

94-806. (10858) Embracery.

Operation and Effect

After a person has been discharged as a grand juror, the crime of embracery could not be committed even though the defendant thought he was influencing a grand juror. State v. Porter, 125 M 503, 242 P 2d 984, 987.

CHAPTER 9—BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS

Section 94-901. Burglary defined.
94-904. Word "enter" defined.

94-901. (11346) Burglary defined. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, motor vehicle and aircraft, vessel, or railroad car, with intent to commit grand or petit larceny or any felony, is guilty of burglary.

History: Ap. p. Sec. 58, p. 188, Bannack Stat.; re-en. Sec. 69, p. 281, Cod. Stat. 1871; re-en. Sec. 69, 4th Div. Rev. Stat. 1879; amd. Sec. 1, p. 50, L. 1885; re-en. Sec. 73, 4th Div. Comp. Stat. 1887; amd. Sec. 820, Pen. C. 1895; re-en. Sec. 8620, Rev. C. 1907; re-en. Sec. 11346, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1949; amd. Sec. 1, Ch. 17, L. 1957. Cal. Pen. C. Sec. 459.

Amendments

The 1949 amendment inserted the word "automobile" and the word "or" before "railroad car."

The 1957 amendment substituted the

words "motor vehicle and aircraft" for the word "automobile."

Effective Date

Section 2 of Ch. 17, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 18, 1957.

Truck

The legislature has made it clear that an automobile and truck are to be considered two distinct and separate vehicles for registration and tax purposes. It does not make sense to hold that the legislature intended, in making entry into an automobile burglary, to have intended the word "automobile" as a general term, and to include automobiles, trucks, busses and the like. Had the legislature intended to use a general term, it would have used the term "motor vehicle." Certainly no interpretation should be given any word which would make an act a crime unless it is clear that the legislature intended that interpretation should be given such word. State v. Duran, 127 M 233, 259 P 2d 1051, 1052. (See, however, the dissenting opinion, 127 M 233, 259 P 2d 1051, 1054.)

References

Cited in State v. Allison, 122 M 120, 199 P 2d 279, 299; State v. Fitzpatrick, 125 M 448, 239 P 2d 529.

94-902. (11347) Degrees of burglary.

Failure to Prove Time Crime Was Committed

Where the information alleges nighttime or first degree burglary it is essential that the state prove the crime occurred during the nighttime as provided in section 94-905. When the evidence is that the crime took place sometime between 3:15 a.m. and 8:00 a.m. and that on the particular day the sun rose at 5:56 a.m. a conviction of nighttime burglary cannot stand. State v. Fitzpatrick, 125 M 448, 239 P 2d 529.

94-904. (11349) Word "enter" defined. The word "enter," as used in this chapter, includes the entrance of the offender into such house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, automobile, vessel, or railroad car, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, or used or intended to be used, to threaten or intimidate the inmates, or to detach or remove the property.

History: En. Sec. 823, Pen. C. 1895; re-en. Sec. 8623, Rev. C. 1907; re-en. Sec. 11349, R. C. M. 1921; amd. Sec. 2, Ch. 126, L. 1949.

Amendment

The 1949 amendment inserted the words "store, mill, barn" and the word "automobile."

Repealing Clause

Section 3 of Ch. 126, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 126, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

94-905. (11350) Nighttime defined.

Operation and Effect

When an information charges nighttime or first degree burglary, proof that the crime occurred in the period between sunset and sunrise is essential in order to convict the defendant. State v. Fitzpatrick, 125 M 448, 239 P 2d 529.

CHAPTER 10—COMMON NUISANCES—MAINTENANCE IN CONNECTION WITH SELLING INTOXICATING LIQUORS—OPIUM—PROSTITUTION AND GAMBLING

94-1001. (11123) Definition of "person" and "building."

Operation and Effect

Actions for the prosecution of gambling laws may be prosecuted under either of these sections or under sections 94-2401 and 94-2404, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Fact that county attorney proceeded

under this law for abatement of gambling nuisance, rather than under sections 94-2401 and 94-2404 for criminal punishment, is not a matter of which the defendant can complain on appeal. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

94-1002. (11124) Certain buildings declared nuisances.

Cross-Reference

See note to sec. 94-1004. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307; State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Punch Boards

Premises wherein punch boards are operated may be abated as a nuisance inasmuch as punch boards constitute a lottery and play at lottery is gambling. Sections 84-5701, 84-5702 (since repealed) and 94-2401 which assume to authorize the use of punch boards as trade stimulators violate § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries, and therefore are invalid and do not prevent the abatement of the premises as a nuisance. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1003. (11125) County attorney to abate nuisance, etc.

References

Cited or applied in Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 584; State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1004. (11126) Verification of complaint—temporary injunction.

Law Applicable

The procedure for the abatement of a nuisance per se provided by the statute is that set forth by this law and the general procedure for the issuance of an injunction in ordinary civil cases has no application. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Order Quashing Injunction Appealable

Where temporary injunction enjoining defendant from conducting the business constituting a nuisance as described in the complaint was quashed same day of issuance and an order issued enjoining defendant from operating "any of the games of chance described in the complaint contrary to the laws of the State of Montana," such order was appealable. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Quashing Injunction Prior to Hearing

Where complaint and affidavits showed prima facie that premises constituted a nuisance per se, it was error to quash the temporary injunction issued thereunder when defendant filed affidavit under provisions of section 93-4211, but injunction should have remained in effect until a hearing was had. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Verified Complaint

A complaint filed by a person other than the county attorney, if verified on information and belief pursuant to section 93-3702, is sufficient for the issuance of a temporary injunction. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

94-1009. (11131) Owner may give bond—terms of bond, etc.

Operation and Effect

This section did not give authority to court to order the return of the property to the owners where sheriff in executing judgment made return of no gambling equipment found notwithstanding that defendants had stipulated that gambling equipment was in their possession. State ex rel. Olsen v. Craven Cigar Store, 124 M 310, 220 P 2d 1029, 1033.

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 142.

CHAPTER 11—CRIMINAL CONSPIRACY AND ILLEGAL PRACTICES IN RESTRAINT OF TRADE—TRUSTS—DISCRIMINATIONS—POOLING GRAIN WAREHOUSES—DESTROYING FOOD

94-1101. (10898) Criminal conspiracy defined and punishment fixed.

References

Cited or applied in State v. Simon, 126 M 218, 247 P 2d 481, 485.

Bill of particulars to one accused of conspiracy to overthrow government. 5 ALR 2d 496.

CHAPTER 14—ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section 94-1475. Political literature to contain name of officer of organization or person publishing and producing.
94-1476. Violation of preceding section a misdemeanor.

94-1454. (10800) **Political criminal libel.**

Compiler's Note

This section may be partially superseded by sec. 94-1475.

94-1475. Political literature to contain name of officer of organization or person publishing and producing. It shall be unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document which is designed to aid, injure or defeat any candidate or any political party or organization or measure before the people unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization publishing, printing, mimeographing, typing or otherwise producing such dodger, bill, handbill, pamphlet or other document or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or the producer thereof with his residence and street address, if any, or his place of business.

History: En. Sec. 1, Ch. 74, L. 1951.

Title of Act

An act making it unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document designed to aid, injure or defeat any candidate or any political party or organization or measure before the people, unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization producing the same, or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or other producer thereof with his residence and street address, if any, or his place of business, and providing that violation thereof shall constitute a misdemeanor, and repealing all acts and parts of acts in conflict herewith.

94-1476. Violation of preceding section a misdemeanor. Any person who shall violate the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 74, L. 1951.

Repealing Clause

Section 3 of Ch. 74, L. 1951 repealed all acts and parts of acts in conflict therewith.

Elections⇐309.
29 C.J.S. Elections § 334.

CHAPTER 18—FALSE PERSONATION AND CHEATS

94-1805. (11410) **Obtaining money or property by false pretenses.**

Application

A defendant charged under section 94-1806 with obtaining property by means of a confidence game cannot be convicted on evidence which shows that the defendant obtained such property "by false or fraudulent representation or pretenses" under this section because such crimes are separate and distinct offenses. State v. Allen, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Evidence of an Offense Not Charged in the Information

When a county officer is charged with collecting illegal fees, by presenting a claim under the name of another to the county for work which was within his duties as county surveyor it was prejudicial error for the court to admit evidence of another claim submitted by the county surveyor to the county which offense was not charged in the information (Justices Bottomly and Angstman dissenting). State v. Hale, 126 M 326, 249 P 2d 495, 496.

Information

Where a statute uses general or generic words in defining the offense the information or indictment bottomed upon that statute must specify the particular facts which constitute the offense. State v. Hale, — M —, 291 P 2d 229, 232. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

An information may be drawn consistent with this section which is not vulnerable to the objection that it is bad for duplicity for charging an offense under section 94-3908 (presenting fraudulent claim to a county). State v. Hale, — M —, 291 P 2d 229, 234. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

Information which avers only that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. State v. Hale, — M —, 291 P 2d 229, 232. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

To characterize a representation as "false" or "fraudulent" does not suffice to state the offense. The particulars in which the representations relied upon are false must appear from facts directly and positively set out. State v. Hale, — M —, 291 P 2d 229, 231. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

Operation and Effect

When a county officer is charged with collecting illegal fees by presenting a claim under the name of another to the county for work which was within his duties as county surveyor, the public policy of this state under section 94-5516 is that, as a matter of defense, the county officer is entitled to offer evidence of his good faith or honest mistake and the value received by the county. State v. Hale, 126 M 326, 249 P 2d 495, 496.

References

Cited or applied in State v. Keller, 126 M 142, 246 P 2d 817, 821.

Obtaining payment by debtor on valid indebtedness by false representation as criminal false pretenses. 20 ALR 2d 1266.

False representations as to income, profits, or productivity of property as fraud. 27 ALR 2d 14.

94-1806. (11411) Confidence games.

Application

Where evidence disclosed that all the defendant did, to induce the complaining witness to give him the ring, was, after she had broached the subject of oil wells, to say, in effect that he had an oil well in Louisiana from which he received $800 a month income, and that he would cut her in for $200 of that income. The jury could assume such statements were false, since, according to the complaining witness, neither the first $200 due July 15th, nor any other was ever paid to her. Defendant should have been prosecuted under section 94-1805 "obtaining money or property by false pretenses," not under this section "confidence games." State v. Allen, 128 M 306, 275 P 2d 200, 205. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Operation and Effect

A defendant charged under this section with obtaining property by means of a confidence or bunco game cannot be convicted on evidence which shows that defendant obtained such property "by false or fraudulent representation or pretenses" under section 94-1805, because such crimes are separate and distinct offenses. State v. Allen, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

CHAPTER 20—FORGERY AND COUNTERFEITING

94-2001. (11355) Forgery of wills, conveyances, etc.

Cross-Reference

State tax stamps, counterfeiting, sec. 94-35-260.

Act Committed by Indian on Indian Reservation

State court was without jurisdiction to try an Indian for forgery of a check where the Indian attempted to cash the check on a store located within the boundaries of an Indian Reservation. The defendant is still a ward of the federal government and is still under the exclusive jurisdiction of the federal government for all acts and crimes defined and made punishable by the laws of Congress, when committed within the exterior boundaries of an Indian reservation. State ex rel. Bokas v. District Court, 128 M 37, 270 P 2d 396.

Non-negotiable Instruments

The fact that a warrant is non-negotiable does not affect the question as to whether one who passes it when containing a known forged indorsement is guilty of forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

Passing of Auditor's Warrant

The statute when speaking of indorsements while not specifically mentioning auditors' warrants does cover "orders." The indorsement of an auditor's warrant amounts to the indorsement of an order within the meaning of the statute. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

Testimony of Person Forging Indorsement as Corroboration

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument, since the person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

Unnecessary for Instrument to Create Civil Liability

It is not necessary that the forged instrument should create civil liability before it can be held to be forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

CHAPTER 24—GAMBLING

Section 94-2429. Slot machines—possession unlawful.
94-2430. Slot machine defined.
94-2431. Person or persons defined.
94-2432. Penalty for possession or permitting use of slot machine.

94-2401. (11159) Gambling games prohibited—penalty, etc.

Compiler's Note

That part of this section which relates to slot machines is probably superseded by secs. 94-2429 to 94-2432.

Cross-Reference

See note to sec. 94-2403. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Constitutionality

This act and sections 84-5701, 84-5702 (since repealed) authorizing and licensing so-called trade stimulators is void and invalid as violative of § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141, 142.

Construction of Amendment

The 1937 amendment to this section which added the licensing provisions did not affect section 94-2404. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

Prosecution of Gambling Laws

Actions for violation of the gambling laws may be prosecuted under either this section and section 94-2404 or under section 94-1001 et seq., the abatement law, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Religious, Fraternal and Charitable Organizations

Religious, fraternal and charitable organizations and private homes are by section 94-2403 exempt from the payment of license fees but are not exempt from the provisions of this act which existed prior to the 1937 amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Slot Machines

Slot machines are not included among the enumerated "hickey" games nor among the "trade stimulators" from which the ban was lifted by the 1937 amendment known as the "Hickey Law." State v. Israel, 124 M 152, 220 P 2d 1003, 1010; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Information charging defendant with the operation of slot machines was not subject to demurrer as not charging an offense. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The ban against slot machines was not lifted by sections 84-5701 and 84-5702 (since repealed). State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The operation of all slot machines is prohibited to all persons without exception. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020; State v. Tursich,

127 M 504, 267 P 2d 641, 642; State v. Porter, — M —, 300 P 2d 952.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-2403. Organizations excluded from act.

Construction

The words "this act" in this section mean the licensing provisions of section 94-2401 which were added by the 1937 Act but not the remainder of such section which was in existence prior to such 1937 amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

Slot Machines

There is nothing in this law that makes it lawful for any person or any religious, fraternal or charitable organization, or any private home to run, conduct or keep any slot machine within the state of Montana. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

94-2404. (11160) Possession of gambling implements prohibited.

Cross-Reference

See note to sec. 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Effect of Other Laws

This section was not affected by the 1937 amendment to section 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020.

94-2409. (11165) Maintaining gambling apparatus a nuisance.

Operation and Effect

Any article, machine or apparatus maintained or kept in violation of any of the provisions of sections 94-2401 or 94-2404 is a public nuisance. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Slot Machines

The using, operating, keeping, and maintaining for use, of slot machines constitutes a nuisance. State ex rel. Replogle y. Joyland Club, 124 M 122, 220 P 2d 988; State v. Israel, 124 M 152, 220 P 2d 1003, 1011; State ex rel. Brown v. Buffalo Rapids Club, 124 M 172, 220 P 2d 1014.

94-2410. (11166) Duty of public officer to seize gambling implements, etc.

Decree Requiring Sale Amended

Decree requiring sheriff to sell seized slot machines was amended on appeal to require the sheriff to destroy such machines. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1001.

References

Cited or applied in State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Forfeiture of property used in connection with gaming before trial of individual offender. 3 ALR 2d 751.

94-2411. (11167) Duty of magistrate to retain gambling implement, etc.

Return of Machines Erroneous

It was error for district court to order slot machines and other gambling equipment returned to defendant on an ex parte proceeding before the disposition of the case and the order is void ab initio. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in State v. Engle, 124 M 175, 220 P 2d 1015, 1017.

94-2412. (11167.1) Disposal of moneys confiscated, etc.

Cross-Reference

See note to sec. 94-2411. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in State v. Engle, 124 M 175, 220 P 2d 1015, 1017.

94-2413. (11168) Authority to break and enter buildings where games, etc.

References

Cited or applied in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2414. (11169) **Duty of public officer to make complaint.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2416. (11171) **Officers neglecting duty subject to forfeiture of office.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2417. (11172) **Receiving money to protect offenders prohibited.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2418. (11173) **Losses at gambling may be recovered in civil action.**

Assignment of, or succession to, statutory right of action for recovery of money lost at gambling. 18 ALR 2d 999.

94-2419. (11174) **Action may be brought by any dependent person.**

References

Cited or applied in Miller v. Emerson, 120 M 380, 186 P 2d 220.

94-2423. (11178) **Immunity of witnesses.**

Privilege or Immunity Must Be Claimed

Even though it be assumed that the provisions of this section were broad enough to include testimony before a grand jury it would have no application where defendant failed to claim either privilege or immunity when called before the grand jury. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023.

Testimony before Grand Jury

The words "grand jury" should not be read into this section which gives immunity from prosecution to persons testifying before a "court or magistrate." State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023.

Defendant cannot, because of testimony before grand jury, be immune from prosecution for offense charged in information filed by county attorney weeks before impanelment of a grand jury. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023; State v. McRae, 124 M 238, 220 P 2d 1025, 1027.

94-2429. Slot machines—possession unlawful. From and after the passage and approval of this act, it shall be a misdemeanor and punishable, as hereinafter provided, for any person to use, possess, operate, keep or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

History: En. Sec. 1, Ch. 197, L. 1949.

Title of Act

An act prohibiting the licensing, use, operation, keeping or maintenance of slot machines within the state of Montana; defining certain terms used in this act; providing penalties for the violation of this act and repealing all acts and parts of acts in conflict herewith; providing for a referendum on this act; and providing for local option elections in counties on the question of the licensing and operation of slot machines and specifying the procedure for holding said election.

Gaming⊂⇒79(1).
38 C.J.S. Gaming § 99.

94-2430. Slot machine defined. A slot machine is hereby defined as a machine operated by inserting a coin, token, chip or trade check therein by the player and from the play of which he obtains, or may obtain, money, checks, chips or tokens redeemable in money. Merchandise vending machines

where the element of chance does not enter into their operation are not within the provisions of this act.

History: En. Sec. 2, Ch. 197, L. 1949.

94-2431. Person or persons defined. In addition to their ordinary meaning, the word "person" or "persons," as used in this act, shall include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders and societies, including religious, fraternal and charitable organizations.

History: En. Sec. 3, Ch. 197, L. 1949.

94-2432. Penalty for possession or permitting use of slot machine. Any person, partnership, club, society, fraternal order, corporation, co-operative association or any other person, individual or organization who violates any of the provisions of this act, or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied or controlled by him or it, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949.

Repealing Clause—Effective Date

Section 5 of Ch. 197, L. 1949 read, "All acts and parts of acts in conflict herewith, particularly all laws of this state and all ordinances of cities and towns relating to the issuance of licenses for the operation of slot machines, are hereby repealed and this act shall take effect and be in force and effect on and after the 31st day of December, 1950, as to sections 1 to 6, inclusive, provided a majority of the votes cast on this issue are against the operation of slot machines, and if a majority of the votes so cast are for the operation of slot machines, the act shall be in effect on said date as to sections 8 to 15, inclusive." At the general election in November, 1950, the majority of votes was against the operation of slot machines. Sections 7 to 16 of Ch. 197, L. 1949 are therefore omitted.

Separability of Provisions

Section 6 of Ch. 197, L. 1949 read, "If any part of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

CHAPTER 25—HOMICIDE

94-2501. (10953) **Murder defined.**

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2502. (10954) **Malice defined—express or implied.**

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767.

Inference of malice or intent to kill where killing is by blow without weapon. 22 ALR 2d 854.

94-2503. (10955) **Degrees of murder.**

Guilty of Lessor Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767.

Homicide: causing one, by threats or fright, to leap or fall to his death. 25 ALR 2d 1186.

94-2505. (10957) Punishment for murder.

Operation and Effect

Where there is evidence sustaining finding by trial court of murder in the first degree supreme court will not interfere with trial court's determination and the sentence of death. State v. Palen, 120 M 434, 186 P 2d 223, 224.

References

Cited in Andres v. United States, 332 U S 499, 92 L Ed 104, 68 S Ct 169.

94-2507. (10959) Manslaughter—voluntary and involuntary.

Subd. 2

Instructions

Where judge instructed the jury in the language of the statute thereby giving the jury the definitions of both voluntary and involuntary manslaughter, defendant could not complain on ground there was no evidence of voluntary manslaughter in the case where the jury found him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Where defendant was charged with second degree murder but the court withdrew the murder charge from the jury and presented the question of the guilt or innocence of the defendant for the crime of manslaughter, an instruction charging the jury that the state must prove the "intent" alleged in the information could properly have been modified to apply to the crime of manslaughter, however, conviction will not be set aside where it appears that no prejudice resulted. State v. Allison, 122 M 120, 199 P 2d 279, 291.

Where evidence showed that defendant was drunk and that he drove his automobile at a high rate of speed into the rear of another automobile going the same direction, causing it to catch fire and killing the occupants, the contention of defendant that he could not remember the events which transpired at that time did not establish an accident and instruction on responsibility for deaths caused by accident was not necessary. State v. Souhrada, 122 M 377, 204 P 2d 792, 796.

In prosecution for involuntary manslaughter the issue is one of criminal negligence rather than intent and giving of instruction that "intent is not an element of involuntary manslaughter" was not erroneous. State v. Souhrada, 122 M 377, 204 P 2d 792, 797.

Since the word "feloniously" is not necessary in the information it was not necessary that the word "feloniously" be defined by the court's instructions and court's erroneous definition could not have been prejudicial particularly where other instructions clearly advised the jury of the elements of the crime. State v. Souhrada, 122 M 377, 204 P 2d 792, 797.

Where the court instructed the jury that in order to find the defendant guilty it must find that the defendant committed an unlawful act, not amounting to a felony, and that the unlawful act was the proximate cause of the injury and death; and then in a later instruction defined criminal negligence as such that amounts to a wanton, flagrant, or reckless disregard of consequences or wilful indifference of the safety or rights of others, the instructions taken as a whole are correct. For while the former may, standing alone, be inaccurate or even erroneous, yet as qualified and explained by other portions of the charge, in pari materia, it fully and fairly submits the case to the jury. State v. Bosch, 125 M 566, 242 P 2d 477, 480.

Operation and Effect

This section is a recognition of the frailty of human nature, and has as its purpose to reduce a homicide committed under the circumstances therein contemplated to the grade of manslaughter. State v. Messerly, 126 M 62, 244 P 2d 1054, 1056.

Sufficiency of Evidence

Where defendant had invited another person to stay or "bunk" with him for the night, and thereafter, while in his tavern, shot through the screen and door of his bedroom striking such person who was on the other side of the door, jury was justified in returning a verdict of guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Verdict of Manslaughter on Charge of Murder

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

94-2510. (10962) Proof of corpus delicti.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 974 (concurring opinion).

94-2511. (10963) **Excusable homicide.**

Instructions

Refusal to give instruction under this section was not reversible error in view of other instructions given. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2512. (10964) **Justifiable homicide by public officers.**

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2513. (10965) **Justifiable homicide by other persons.**

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

CHAPTER 26—KIDNAPING

94-2601. (10970.1) **Kidnaping—penalty—place of trial.**

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnaping. 17 ALR 2d 1003.

CHAPTER 27—LARCENY AND FALSIFICATION OF PUBLIC RECORDS AND JURY LISTS

Section 94-2702. Uttering fraudulent checks or drafts—evidence.

94-2701. (11368) **Larceny defined.**

Instructions

Conviction under this section requires proof of specific intent and an instruction that "when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent. The law also presumes that a person intends the ordinary consequences of any voluntary act committed by him" was erroneous. State v. Garney, 122 M 491, 207 P 2d 506.

Larceny by Indians on Indian Territory

A state district court was without jurisdiction to convict an Indian of larceny which occurred on Indian territory since under Acts of Congress (U. S. C. Tit. 18, §§ 1153, 3242) such an offense is within the exclusive jurisdiction of the United States. State v. Pepion, 125 M 13, 230 P 2d 961.

94-2702. (11369) **Uttering fraudulent checks or drafts — evidence.** Any person who for himself or as the agent or representative of another or as an officer of a corporation, wilfully, with intent to defraud shall make or draw or utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money upon any bank or depositary, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has no funds or insufficient funds in or credit with such bank or depositary, or person, or firm, or corporation, for the payment of such check, draft, or order in full upon its presentation, although no express representation is made with the reference thereto, shall upon conviction be punished as follows: If there are no funds in or credit with such bank or depositary, or person, or firm, or corporation, for the payment of any part of such check, draft or order, upon presentation, then in that case the person convicted shall be punished by imprisonment in the state prison not exceed-

ing five (5) years, or by a fine not exceeding five thousand dollars ($5,000.00) or by both such fine and imprisonment; if such check, draft or order be for a sum of twenty-five dollars ($25.00) or less, and there are some but not sufficient funds in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full, then in that case the person so convicted shall be punished by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars ($300.00) or by both such fine and imprisonment; if such check, draft or order be for a sum greater than twenty-five dollars ($25.00) and there are some but not sufficient funds in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, then in that case the person so convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars ($5,000.00) or by both such fine and imprisonment. As against the maker or drawer thereof, the making, drawing, uttering or delivering of such check, draft or order as aforesaid shall be prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds, as the case may be, in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, within five (5) days after receiving notice that such check, draft, or order has not been paid by the drawee. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank, depositary, person, firm or corporation, for the payment of such check, draft or order.

History: En. Sec. 881, Pen. C. 1895; re-en. Sec. 8643, Rev. C. 1907; amd. Sec. 1, Ch. 63, L. 1919; re-en. Sec. 11369, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1957. Cal. Pen. C. Sec. 476a.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 135, Laws 1957, repealed all acts and parts of acts in conflict therewith.

Operation and Effect

Held, that where a person was convicted under this section, the proper procedure for review of errors was by appeal under the statutes and not by seeking at a later date the common-law writ of coram nobis. Were it shown that the defendant's case was exigent, as for example, that although innocent of any crime he was nevertheless arbitrarily sentenced and wrongfully imprisoned under that sentence, and if then the existing remedies by appeal as prescribed by our statutes and as well the usual writs to which this court customarily turns to prevent an injustice were found in truth inadequate, the court would not hesitate to design a further remedial writ so that the court could meet the emergency and attain the ends of justice, otherwise denied. State v. Zumwalt, — M —, 291 P 2d 257, 260. (Dissenting opinion, — M —, 291 P 2d 257, 262 based on the opinion that the defendant was innocent of the crime charged and arbitrarily sentenced.)

94-2704. (11371) Grand larceny defined.

Effect of Ownership Not Proven as Alleged

Where the information alleges the ownership of the property, such allegation must be proven; proof of a brand only is not sufficient proof of the ownership of an animal bearing such brand. State v. Elmore, 126 M 232, 247 P 2d 488, 492.

Operation and Effect

Conviction for larceny cannot be sustained where the evidence connecting the defendant with the hide and asportation of a live steer amounts to no more than suspicion and conjecture. State v. Elmore, 126 M 232, 247 P 2d 488, 492.

94-2721. (11388) **Receiver of stolen property.**

Essential Elements of Crime

Proof that the defendant knew the property was stolen is an essential element of the crime. The evidence is not sufficient where the state relies on a bill of sale which describes "3 cow hides red no brand" and in fact the hides had brands and cattle was missing from the brand owners, while the defendant proves that when he received the hides they were bundled up and so stiffly frozen that they could not be examined to see if they had brands. State v. Gilbert, 126 M 171, 246 P 2d 814, 815.

Operation and Effect

Conviction for receiving stolen goods cannot be sustained where the information charged that the defendant received a deepfreeze knowing the same to have been stolen from the true owner, Missoula County, while the facts where that the defendant was the county surveyor and he ordered a deepfreeze from a company and charged it to the county. Since the acts of the surveyor were unlawful, the county never purchased the freezer and never had it in its possession and at no time had title to the deepfreeze; therefore, Missoula County was never the owner from whom it was stolen as charged in the information. State v. Bourdeau, 126 M 266, 246 P 2d 1037, 1038.

CHAPTER 28—LIBEL

Section 94-2807. Publishing a true report of public proceedings privileged.

94-2807. (10995) **Publishing a true report of public proceedings privileged.** No reporter, editor, or proprietor of any newspaper, nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, nor any agent or employee of any such owner, licensee, or operator, is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which is not implied from the mere fact of publication or broadcast.

History: En. Sec. 436, Pen. C. 1895; re-en. Sec. 8331, Rev. C. 1907; re-en. Sec. 10995, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1951. Cal. Pen. C. Sec. 254.

Amendment

The 1951 amendment inserted the words "nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, not any agent or employee of any such owner, licensee, or operator," and "or broadcast."

Repealing Clause

Section 2 of Ch. 13, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 13, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

CHAPTER 30—LOTTERIES

94-3001. (11149) **Lottery defined.**

Numbers Games

A numbers game, whether called Chinese lottery, "The Crown Game," "The Crown punchboard game" or any other game is a lottery. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Punch Boards

Punch boards constitute a lottery. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141.

In an action for violation of this section it was no defense that the defendant had offered to pay for the operation of such punch boards in accordance with section 84-5703 et seq. which purports to license trade stimulators such as punch boards since it is not competent for the legislature to authorize lotteries in view of Const. Art. 19, sec. 2 and the case of State ex rel. Harrison v. Deniff. State v. Tursich, 127 M 504, 267 P 2d 641, 642.

Slot Machines

The operation of a slot machine is a lottery and banned by the criminal laws of this state. State v. Marck, 124 M 178, 220 P 2d 1017, 1019; State v. Read, 124 M 184, 220 P 2d 1020; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

References

Cited in State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

94-3003. (11150) Punishment for drawing lottery.

Cross-Reference

See note to sec. 94-3001. State v. Marck, 124 M 178, 220 P 2d 1017, 1019.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-3011. (11158) Punishment.

Cross-Reference

See note to sec. 94-3001. State v. Marck, 124 M 178, 220 P 2d 1017, 1019.

CHAPTER 33—MALICIOUS MISCHIEF GENERALLY

Section 94-3334. Injury to trees on public lands.

94-3305. (11478) Use of automobiles without consent of owners, etc.

References

Cited or applied in the dissenting opinion in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1061.

94-3334. (11507) Injury to trees on public lands. Every person who commits a trespass on or any injury to any state lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other state lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the state for three (3) times the value of said trees or timber, or lumber into which the same are converted.

All fines collected and all moneys recovered by virtue of this section must be paid into the trust fund if the lands involved are held in trust either through deed or grant or be paid to the funds of the state departments administrating such lands where lands not held in trust are involved.

History: Ap. p. Sec. 1, p. 256, L. 1891; en. Sec. 1076, Pen. C. 1895; re-en. Sec. 8773, Rev. C. 1907; re-en. Sec. 11507, R. C. M. 1921; amd. Sec. 1, Ch. 221, L. 1955.

Amendment

The 1955 amendment substituted that part of the second paragraph beginning with the words "trust fund * * *" for "school fund of the state."

CHAPTER 35—MISCELLANEOUS OFFENSES

Section 94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years.
94-35-106.1. Jurisdiction of offenses.
94-35-106.2. Possession of beer or liquor by minor—misdemeanor.
94-35-123. Unlawful to dispense mescal button.
94-35-152.1. Sale of prison-made goods on the open market prohibited.
94-35-152.2. Contracts forbidden.
94-35-152.3. Exchange of goods within the state.
94-35-152.4. Regulation by board.
94-35-152.5. Pricing by board.
94-35-152.6. Advisory council—organization and duties.
94-35-152.7. Purchase mandatory.

94-35-152.8. Exceptions from mandatory provisions.
94-35-152.9. Intentional violation.
94-35-152.10. Authority to print and distribute catalogues.
94-35-152.11. Penalties.
94-35-152.12. "Open market" defined.
94-35-152.13. Revolving fund.
94-35-152.14. Interstate sale or exchange between penal institutions prohibited.
94-35-152.15. Manufacture of license plates by penal institutions not prohibited—sale of surplus raised exclusively for inmates not prohibited.
94-35-152.16. Repair and maintenance of property of penal and custodial institutions by inmates not prohibited.
94-35-152.17. Board to provide for repair and maintenance work.
94-35-152.18. Institutions subject to act.
94-35-258. Endurance races of horses prohibited.
94-35-259. Penalty for running endurance horse race.
94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.
94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number.
94-35-262. Altering, defacing or removing serial number on farm machinery.
94-35-263. Penalty.
94-35-264. Furnishing certain articles to prisoners in state prison—receiving such article by prisoners—felony.
94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty.
94-35-266. Provisions for life saving equipment.
94-35-267. Act not to interfere with federal laws or regulations.
94-35-268. Penalty.
94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.
94-35-270. Delivery of grain containing toxic chemicals to public warehouses.
94-35-271. Penalty for violation.
94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty.
94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors.

94-3506. (10921) Arrests, seizure or levy upon property, etc.

False imprisonment: liability of private citizen for false arrest by officer. 21 ALR 2d 643.

94-3513. (11296) Repealed.

Repeal

This section (Sec. 752, Pen. C. 1895), relating to boxing and wrestling matches, was repealed by Sec. 4, Ch. 171, Laws 1953.

94-3525. (11302) Carrying certain concealed weapons in cities, etc.

Forfeiture of weapon unlawfully carried, before trial of individual offender. 3 ALR 2d 752.

94-3527. (11304) Same—who excepted from act.

References

Cited or applied in State v. Nickerson, 126 M 157, 247 P 2d 188, 192.

94-3540. (10944) Criminal contempt.

Contempt for disobedience of orders in criminal matters where beyond court's jurisdiction. 12 ALR 2d 1059.

Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group. 19 ALR 2d 388.

94-35-102, 94-35-103. (11314, 11259) **Repealed.**

Repeal

These sections (Sec. 1, Ch. 84, Laws 1903 and Sec. 696, Pen. C. 1895), relating to the prohibition against Indians carrying firearms while off the reservation, were repealed by Sec. 1, Ch. 12, Laws 1953.

94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years. Any person who shall sell, give away or dispose of intoxicating liquor to any persons under the age of twenty-one (21) years, shall for the first offense be subject to punishment not exceeding five hundred dollars ($500.00) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under twenty-one (21) years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes.

History: En. Sec. 1, Ch. 143, L. 1949.

Compiler's Note

The section appearing in the parent volume (Sec. 1, Ch. 122, Laws 1927 as amended Sec. 1, Ch. 124, Laws 1941 and appearing in Revised Codes 1935 as Sec. 11048.1) was held to have been impliedly repealed by Ch. 105, Laws 1933 in State v. Holt, 121 M 459, 194 P 2d 651, and was specifically repealed by Sec. 3, Ch. 143, Laws 1949, and therefore the law set out above (Sec. 1, Ch. 143, Laws 1949) covering the same subject-matter has been given the same section number.

Title of Act

An act preventing the selling or giving away of intoxicating liquor to persons under twenty-one (21) years of age; providing penalties therefor: and repealing Section 11048.1 as amended by Chapter 124 of the Laws of the Twenty-seventh Legislative Assembly of the State of Montana, 1941, and all other acts and parts of acts in conflict herewith.

Alcoholic Content of Beer

It is not necessary that the information or the evidence show the alcoholic content of the beer in order to obtain a conviction. State v. Winter, — M —, 285 P 2d 149, 156.

Construction

Under the above statute the selling to a minor is an offense without regard to whether the defendant had a license to sell or not. State v. Winter, — M —, 285 P 2d 149, 155.

Entrapment

Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. State v. Parr, — M —, 283 P 2d 1086. (Dissenting opinion, — M —, 283 P 2d 1086, 1090.)

Validity

This section was not impliedly repealed by section 4-330 as amended by chapter 166, Laws of 1951. State v. Winter, — M —, 285 P 2d 149, 156.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

94-35-106.1. Jurisdiction of offenses. In cases of prosecution for first offenses under this act, the justice courts and district courts of the state of Montana shall have concurrent original jurisdiction. In all other cases the district courts of the state of Montana shall have exclusive original jurisdiction for violation of the provisions of this act.

History: En. Sec. 2, Ch. 143, L. 1949.

Repealing Clause

Section 3 of Ch. 143, Laws 1949 repealed section 11048.1, Revised Codes 1935, as amended by chapter 124, Laws 1941 and all other acts or parts of acts in conflict therewith.

References

Cited or applied in State v. Winter, — M —, 285 P 2d 149, 155.

94-35-106.2. Possession of beer or liquor by minor — misdemeanor. Any person who shall not have reached the age of twenty-one (21) years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 125, L. 1957.

Title of Act

An act prohibiting the possession of beer and liquor by persons under the age of twenty-one (21) years; providing a penalty.

94-35-122. (10948) **Maliciously procuring warrant.**

References

Cited in Wolf v. Colorado, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-123. (3202.1) **Unlawful to dispense mescal button.** That it shall be unlawful for any person, firm, corporation or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or have in his or its possession Peyote (Pellote), botanically known as Lophophora Williamsii; or Agava Americana, commonly known as the Mescal Button; or any compound, derivative, or preparation thereon; provided that the terms of this act shall not apply to transporting, possession or using said Peyote for religious sacramental purposes by any bona fide religious organization incorporated under the laws of the state of Montana.

History: En. Sec. 1, Ch. 22, L. 1923; amd. Sec. 1, Ch. 53, L. 1957.

Amendment

The 1957 amendment added the proviso clause.

Repealing Clause

Section 2 of Ch. 53, Laws 1957 repealed all acts or parts of acts in conflict therewith.

94-35-143. (10952) **Oppression and injury by an officer.**

References

Cited in Wolf v. Colorado, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-152.1. Sale of prison-made goods on the open market prohibited. The sale on the open market of this state of all goods, wares, or merchandise, manufactured or mined, wholly or in part, by any penal or reformative institutions is hereby prohibited. On and after the effective date of this act, the provisions of this act and all other regulations and laws of this state in effect at that time, and not inconsistent with this act will apply to all goods, wares, or merchandise, manufactured or mined, wholly or in part, by convicts or prisoners (except prisoners on parole or probation), and in any penal or reformatory institutions, and transported into the state of Montana for use or distribution to the same extent and in the same manner as if such goods and merchandise were so manufactured, produced, or mined within the state of Montana. Provided, that nothing contained herein, shall be construed to prevent the sale of agriculture [agricultural] and horticultural products through the usual channels of trade.

History: En. Sec. 1, Ch. 162, L. 1953.

Compiler's Note

The bracketed word "agricultural" was inserted by the compiler to indicate an apparent error.

Title of Act

An act to provide for regulating the production and disposition of prison-made goods; requiring the penal and custodial institutions of the state to purchase such goods except in certain instances; providing that repair and maintenance work may be done in the custodial and penal institutions of the state; creating an advisory council; providing for the organization, duties and purpose of said council; providing penalties for the violation of this act and repealing sections 94-35-153 to 94-35-162, inclusive, of the Revised Codes of Montana, 1947.

Convicts⇐13.
18 C.J.S. Convicts § 26.

94-35-152.2. Contracts forbidden. It is hereby declared unlawful for the state of Montana or any of its officers or agents; or any of the political subdivisions thereof, to enter into any contract or any arrangement for the labor of any of the inmates of any of the penal or reformative institutions of this state.

History: En. Sec. 2, Ch. 162, L. 1953.

Convicts⇐10(1).
18 C.J.S. Convicts § 16.

94-35-152.3. Exchange of goods within the state. For the purpose of this act, the provisions of section 1 [94-35-152.1], relating to the sale on the open market, shall not include the sale or exchange of convict-made goods produced in the penal or reformative institutions, to or with any penal, charitable, reformatory or custodial institutions, the major portion of whose maintenance is contributed by this state for the use and/or consumption of said institution, or for the use or consumption of the inmate of said institution.

History: En. Sec. 3, Ch. 162, L. 1953.

94-35-152.4. Regulation by board. The board of state prison commissioners is hereby authorized and directed to make such rules and regulations, governing the conducted industries in the penal or reformative institutions of this state, as will (a) Result in the manufacture, mining, or production of only such goods, wares or merchandise as may be used or needed in the several penal, custodial, charitable or reformatory institutions, the major portion of whose maintenance is contributed by this state, (b) Result in the manufacture at such penal or reformative institutions of as wide a variety of products as practicable, it being the purpose and intent of this provision to direct the management of said institutions, to so diversify the products of said institution as to eliminate the concentration of prison labor in any one or few industries, and (c) Accomplish to the greatest degree the rehabilitation of the inmates.

History: En. Sec. 4, Ch. 162, L. 1953.

94-35-152.5. Pricing by board. The board of state prison commissioners is hereby authorized and directed to establish and fix the sale price for the products of the industries in the penal or reformative institutions of the state. In no case shall prices so established and fixed for such products be greater than the prices existing in the open market for products of comparable quality.

History: En. Sec. 5, Ch. 162, L. 1953.

94-35-152.6. Advisory council—organization and duties. There is hereby created an advisory council for the purpose of studying existing methods of manufacture and distribution of prison-made goods with the view to improvements which will accomplish the ends and purposes set forth in section 3 [94-35-152.3] of this act. Said council shall consist of five (5) members to be appointed by the governor. One (1) of the members shall be a representative of labor, one (1) of industry, one (1) of agriculture, one (1) of consumer goods distribution and the state director of vocational education. The council shall organize within thirty (30) days after their appointment by the election of a chairman and secretary and such other officers as they may deem necessary. Their duties shall be to examine into all matters relating to the manufacture and distribution of prison-made goods, to consult with and advise the warden of the state prison in regard to existing prison industries, the management thereof and the advisability of establishing additional industries with the view to accomplishment of the results set forth in section 3 [94-35-152.3] of this act. From time to time, if they shall deem it advisable to do so, they shall render reports and make recommendations to the board of state prison commissioners. They shall prepare a full report of their investigations, findings and recommendations. They shall be paid their actual and necessary expenses in connection with these duties.

History: En. Sec. 6, Ch. 162, L. 1953.

94-35-152.7. Purchase mandatory. On and after the effective date of this act, the penal and custodial institutions of this state shall purchase from the board of state prison commissioners all articles, if available, required by such penal or custodial institutions of the state, produced or manufactured by the said board in the penal or reformative institutions of the state and no such article shall be purchased by any penal or custodial institution of the state from any other source unless excepted from the provisions of this section, as hereinafter provided.

History: En. Sec. 7, Ch. 162, L. 1953.

94-35-152.8. Exceptions from mandatory provisions. Exceptions from the operation of the mandatory provisions of this section may be made in any case where, in the opinion of the board of state prison commissioners, articles so produced or manufactured do not meet the reasonable requirements of such penal or custodial institution of the state, or in any case where the requisition made cannot be complied with on account of an insufficient supply of articles or supplies required. No such penal or custodial institution shall be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the board of state prison commissioners when the articles produced or manufactured by it, in accordance with its standards, are reasonably adapted to the actual needs of such penal or custodial institution.

History: En. Sec. 8, Ch. 162, L. 1953.

94-35-152.9. Intentional violation. No voucher, certificate or warrant issued by the state, or penal or custodial institution, shall be questioned on the grounds that this section has not been complied with, but if intentional violation of this section by any penal or custodial institution continues after notice from the governor to desist, the same shall constitute a malfeasance

in office and shall subject the officers responsible for this violation to suspension or removal from office, as may be provided by law in other cases of malfeasance.

History: En. Sec. 9, Ch. 162, L. 1953.

94-35-152.10. Authority to print and distribute catalogues. The board of state prison commissioners may cause to be prepared annually, at such times as it may determine, catalogues and circulars containing the description of all articles and supplies manufactured and produced by it, pursuant to the provisions of this act, copies of which catalogue or circular shall be sent by it to all penal and custodial institutions of the state.

History: En. Sec. 10, Ch. 162, L. 1953.

94-35-152.11. Penalties. Whoever sells or exposes for sale or exchange any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners (except prisoners on parole or probation), in any penal or reformatory institutions, except in the methods established by this act, shall, upon conviction, be subject to a fine of three hundred dollars ($300.00) or imprisonment for ninety (90) days, or both, and each such sale or offer for sale or exchange shall be considered a separate offense; provided that this act shall have no application to articles and things made by an inmate for his own individual profit.

History: En. Sec. 11, Ch. 162, L. 1953.

94-35-152.12. "Open market" defined. The words "open market," as used in this act, shall mean all sales or exchange conducted or transacted through the medium of stores, shops, sales agents or agencies, whether retail or wholesale, or in any manner to the consuming public.

History: En. Sec. 12, Ch. 162, L. 1953.

94-35-152.13. Revolving fund. All receipts from the sale of the products produced or manufactured by the industries in the penal or reformatory institutions of the state shall be deposited in the state treasury to the credit of a special fund to be designated "industrial revolving fund." Said fund shall be available for capital outlay for industrial purposes or maintenance, operation and recurrent expenses of the industries above described. At the beginning of each fiscal year the maximum amount of such revolving fund shall not exceed an amount equivalent to fifty per cent (50%) of the total sales from all industries for the preceding fiscal year and any excess shall be transferred to the state general fund.

History: En. Sec. 13, Ch. 162, L. 1953.

94-35-152.14. Interstate sale or exchange between penal institutions prohibited. The exchange of the products of penal or reformatory institutions of this state, as specified in this act, for the products of any other state is hereby prohibited.

History: En. Sec. 14, Ch. 162, L. 1953.

94-35-152.15. Manufacture of license plates by penal institutions not prohibited—sale of surplus raised exclusively for inmates not prohibited. Nothing contained herein shall be deemed to prevent any of the said institutions from manufacturing motor vehicle number plates, and other articles

required or needed by the office of the registrar of motor vehicles, or metal highway marking signs required by the state highway department, or from preventing any of said institutions selling or disposing of any reasonable surplus of produce raised exclusively for the use, feeding or maintenance of the inmates of any of said institutions.

History: En. Sec. 15, Ch. 162, L. 1953.

94-35-152.16. Repair and maintenance of property of penal and custodial institutions by inmates not prohibited. Nothing contained herein shall be deemed to prevent the repair and maintenance of all property and equipment of all custodial and penal institutions by the inmates of those institutions, nor shall it be deemed to prevent the repair and maintenance in any of the penal or custodial institutions of the state of furniture and equipment of any other institution of the state.

History: En. Sec. 16, Ch. 162, L. 1953.

94-35-152.17. Board to provide for repair and maintenance work. The board of state prison commissioners is hereby authorized and directed to make rules and regulations for the purpose of establishing facilities and programs in the penal and reformative institutions of the state which will enable the said institutions to carry out as much of the repair and maintenance work as the nature of the penal and reformative institutions will permit.

History: En. Sec. 17, Ch. 162, L. 1953.

94-35-152.18. Institutions subject to act. "Penal and custodial institutions of the state" as used in this act shall mean the following: the state penitentiary at Deer Lodge; the state tuberculosis sanitarium at Galen; Montana state hospital at Warm Springs; the soldiers' home at Columbia Falls; the state orphans' home at Twin Bridges; the Montana state training school at Boulder; the Montana state school for the deaf and blind at Great Falls; the Montana state industrial school at Miles City; the state vocational school for girls at Helena, and the state home for the aged at Lewistown.

History: En. Sec. 18, Ch. 162, L. 1953.

Repealing Clause

Section 19 of Ch. 162, Laws 1953 specifically repealed secs. 94-35-153 to 94-35-162.

Effective Date

Section 20 of Ch. 162, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

94-35-153 to 94-35-162. (11573 to 11573.9) **Repealed.**

Repeal

These sections (Sec. 2, Ch. 32, Laws 1911; Secs. 1 to 9, Ch. 172, Laws 1933; amd. Sec. 1, Ch. 9, Ex. L. 1933), relating to prison-made goods, were repealed by Sec. 19, Ch. 162, Laws 1953 effective March 3, 1953. For present law, see secs. 94-35-152.1 to 94-35-152.18.

94-35-167. (11231) **Public nuisances defined.**

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-35-169. (10928) **Public officers—resisting in the discharge, etc.**

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified as for violation of

this section since plaintiff had right to possession of the check. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

94-35-216. (11039) **Sunday—certain activities on, forbidden.**

Construction of statute or ordinance prohibiting or regulating sports and games on Sunday. 24 ALR 2d 813.

94-35-258. Endurance races of horses prohibited. It shall be unlawful for any person, firm, corporation, association or organization within the state of Montana to sponsor, promote, conduct, or participate in sponsoring, promoting or conducting any horse race, commonly known as an endurance race, for a distance of more than two (2) miles.

History: En. Sec. 1, Ch. 27, L. 1949.

Title of Act

An act prohibiting endurance races of more than two miles; providing a penalty; and repealing all acts in conflict.

Animals⇐40.
3 C.J.S. Animals § 70.

94-35-259. Penalty for running endurance horse race. Any person, firm, corporation, association, or organization violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred fifty dollars ($250.00) or more than five hundred dollars ($500.00) or by imprisonment in the county jail of not less than ninety [90] days or more than one [1] year.

History: En. Sec. 2, Ch. 27, L. 1949.

Repealing Clause

Section 3 of Ch. 27, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Animals⇐41.
3 C.J.S. Animals § 75.

94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty. (a) Every person required by law to affix any tax stamp or insignia of the state of Montana, to or upon any article to evidence the payment of a tax or license thereon, who shall fail, neglect or refuse to affix such stamp or insignia thereto, or to affix it in the proper place, or to cancel it, in the manner and as required by law, or as required by rules and regulations of the state board of equalization of this state when charged with administering any act relating thereto, or who shall wilfully remove any such affixed stamp or insignia from any such article and affix it to another such article required by law to be so stamped or marked, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than one hundred dollars ($100.00), nor more than three hundred dollars ($300.00), or by both such fine and imprisonment.

(b) Every person without authority of law, who shall wilfully make, print, manufacture, counterfeit, or attempt to make, print, manufacture or counterfeit any such stamp or insignia of the state of Montana or of any other state, or who shall, without authority of law, have in his possession any such counterfeit stamp or insignia, die, equipment or material for the making, printing, manufacturing or counterfeiting of any such stamp or insignia, or who shall be concerned therewith, is guilty of a felony and shall be punished by imprisonment in the state prison not less than one (1) year,

nor more than five (5) years, or by a fine of not less than one thousand dollars ($1,000.00), nor more than five thousand dollars ($5,000.00), or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 43, L. 1949.

Title of Act

An act relating to tax stamps or insignia of the state of Montana; providing penalty for counterfeiting any such stamp or insignia, or having possession thereof, or being concerned therewith; prescribing penalty for re-using any such stamp or insignia, and for failure or refusal to properly affix any such stamp or insignia, or to properly cancel any such stamp.

Repealing Clause

Section 2 of Ch. 43, Laws 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 43, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 23, 1949.

Counterfeiting⚖6; Licenses⚖40.
20 C.J.S. Counterfeiting § 9; 53 C.J.S. Licenses § 66.

94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number. No person, firm or corporation shall import, or cause to be imported into the state of Montana any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; nor transport, sell, offer for sale or otherwise dispose of any such farm implements or machinery within the state of Montana knowing the same to have been imported in violation of this act.

History: En. Sec. 1, Ch. 167, L. 1953.

Title of Act

An act prohibiting the importation into Montana of farm implements or machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; prohibiting the destruction, removal, alteration, covering or defacing of the serial numbers on farm implements or machinery; prohibiting the transportation or offering for sale, selling or otherwise disposing of farm implements or machinery knowing the same to have been imported into Montana in violation of this act and providing penalties for the violating hereof.

94-35-262. Altering, defacing or removing serial number on farm machinery. No person, firm, association or corporation shall destroy, remove, alter, cover, or deface the manufacturer's serial numbers from any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery having such numbers.

History: En. Sec. 2, Ch. 167, L. 1953.

94-35-263. Penalty. Any wilful violation of any of the provisions of this act shall constitute a misdemeanor.

History: En. Sec. 3, Ch. 167, L. 1953.

94-35-264. Furnishing certain articles to prisoners in state prison—receiving such articles by prisoners—felony. Any person who, without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner committed to the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half (½) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, or any knives, razors, drugs, narcotics, guns, am-

munition, ropes, ladders, clothing other than that issued by the state prison, or money to such prisoner; or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars ($10,000), or both.

History: En. Sec. 1, Ch. 177, L. 1953.

Title of Act

An act providing that any person who, without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner confined in the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half (½) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, clothing, or money to such prisoner, or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars ($10,000), or both.

Repealing Clause

Section 2 of Ch. 177, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 177, Laws 1953 provided the act should be in effect upon its passage and approval. Approved March 4, 1953.

Prisons⇨17½.
72 C.J.S. Prisons § 22.

94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty. Any person, firm or corporation abandoning or discarding in any place accessible to children any refrigerator, icebox or ice chest, of a capacity of one and one-half cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars ($50.00), or imprisoned not more than thirty (30) days, or both.

History: En. Sec. 1, Ch. 126, L. 1955.

Title of Act

An act providing penalties for abandoning or discarding refrigerators, iceboxes or ice chests with attached doors or lids in places accessible to children; providing persons knowingly permitting such conditions to exist to be negligent in addition to penalties and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 126, Laws 1955 repealed all acts and parts of acts in conflict therewith.

94-35-266. Provisions for life saving equipment. (1) It shall be unlawful for any person, firm, corporation, or other entity, owning, renting, leasing or using any boat, either privately or for hire, to operate said boat upon the streams, lakes, reservoirs or waters within the state of Montana, without such life saving or preserving equipment as hereinafter defined. There shall be adequate life jackets, or preservers capable of keeping afloat such persons in or upon the above mentioned boat while it is in operation upon the waters of this state.

(2) A life jacket shall be an article worn upon the person, of sufficient buoyancy and designed for the purpose of keeping such person afloat in water. A life preserver shall be any other article, not necessarily worn upon the person, carried readily detachable from said boat and of sufficient buoyancy and capable of keeping said person afloat in water.

History: En. Sec. 1, Ch. 139, L. 1955.

Title of Act

An act to make it unlawful for the operation of boats on the waters within the state of Montana without suitable life saving or life preserving equipment carried therein and providing for a penalty for violation of this act.

94-35-267. Act not to interfere with federal laws or regulations. The provisions of this act are in no way intended to interfere with federal laws or regulations pertaining to the navigable streams within the state of Montana or within the national parks or forest reserves within the state of Montana.

History: En. Sec. 2, Ch. 139, L. 1955.

94-35-268. Penalty. A violation of this act shall be deemed a misdemeanor and it shall be punishable by a fine not to exceed ten dollars ($10.00). This act shall be enforceable by peace officers and state fish and game wardens of the state of Montana.

History: En. Sec. 3, Ch. 139, L. 1955; amd. Sec. 1, Ch. 15, L. 1957.

Amendment

The 1957 amendment substituted the words "peace officers and state fish and game wardens" for the words "all peace officers."

Repealing Clause

Section 2 of Ch. 15, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 15, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 16, 1957.

94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor. Any person who, in the act of pursuing, taking or killing game animals or game birds, shall act in a careless or reckless manner, or with wanton disregard of human life or property, or who knowingly fails to give all reasonable assistance to any person whom he has injured or wounded, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and upon conviction thereof, be punished as provided by law.

History: En. Sec. 1, Ch. 189, L. 1955.

Title of Act

An act providing for the prosecution of careless, reckless and negligent hunters, and for imposing of penalties upon conviction thereof.

94-35-270. Delivery of grain containing toxic chemicals to public warehouses. It shall be unlawful for any person, firm, corporation or association, to deliver to any public warehouse, any grain in bulk, if such grain contains toxic chemicals, providing such person, firm, corporation or association knew, or upon the exercise of reasonable diligence, could have known of the presence of toxic chemicals in the grain.

History: En. Sec. 1, Ch. 9, L. 1957.

Title of Act

An act making it unlawful to deliver to any public warehouse any grain in bulk containing toxic chemicals if the person, firm, corporation or association delivering such grain knew, or by the exercise of reasonable diligence, could have known, of the presence of such toxic chemicals; pro-

viding that such delivery shall constitute a misdemeanor and providing penalties therefor; and repealing all acts and parts of acts in conflict herewith.

94-35-271. Penalty for violation. Any person, firm, corporation or association violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500.00) and not less than two hundred fifty dollars ($250.00) or be imprisoned for not more than six (6) months and not less than thirty (30) days, or both.

History: En. Sec. 2, Ch. 9, L. 1957.

Repealing Clause

Section 3 of Ch. 9, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty. Every person who shall wilfully operate or use any aircraft without the consent of the owner, or who shall wilfully interfere or tamper with any aircraft without the consent of the owner, or who shall wilfully put into operation the engine of any aircraft without the consent of the owner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six (6) months or by a fine of not more than five hundred dollars ($500.00) or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 83, L. 1957.

Title of Act

An act making it a misdemeanor for any person to wilfully use or operate any aircraft, or wilfully interfere or tamper with any aircraft, or wilfully put into operation the engine of any aircraft, without the consent of the owner; providing a penalty for such offense; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 83, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors. Every person who carries or bears upon his person or who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him or who owns, possesses, uses, stores, gives away, sells or offers for sale, a switch blade knife shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment in the county jail for a period not exceeding six (6) months or by both such fine and imprisonment; provided, that a bona fide collector, whose collection is registered with the sheriff of the county in which said collection is located, is hereby exempted from the provisions of this act. For the purpose of this section a switch blade knife is defined as any knife which has a blade one and one-half (1½) inches long or longer, which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957.

Title of Act

An act making it a criminal offinse [offense] for any person to own, possess, carry, sell or display a switch blade knife, defining a switch blade knife, making it a criminal offense and providing a punishment therefor; providing for the effective date of said act and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 243, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 243, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

CHAPTER 36—OBSCENITY—LITERATURE—INDECENT EXPOSURE —HOUSES OF ILL FAME—PROHIBITION OF CERTAIN ADVERTISEMENTS

Section 94-3601. Obscene literature not to be given to or sold by minors.
94-3602. Penalty.

94-3601. (11134) **Obscene literature not to be given to or sold by minors.** (1) It is unlawful for any person to sell, lend, give away, distribute, resell, or redistribute, show, or have in his possession with intent to sell, give away, distribute, resell, or redistribute, or to show or advertise or otherwise offer for loan, gift, or distribution, to any minor child, under the age of eighteen (18) years, any book, pamphlet, magazine, newspaper, lewd picture, story paper, so-called comic book, or other printed, mimeographed or published matter, devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of lust or crime, or portraying sexually indecent conduct or subject-matter, or portraying the planning or committing of deeds of crime, violence, horror, brutality, immorality or vice. It shall be unlawful to exhibit upon any street or highway, or in any place within the view of any minor child under the age of eighteen (18) years, or to hire, use, employ, or permit such child to sell or give away or in any manner distribute any such book, pamphlet, magazine, lewd picture, newspaper, story paper, so-called comic book or publication or other printed, mimeographed, or published matter above described.

(2) The prohibitions and penalties imposed hereby shall not extend to publications within any constitutional guarantee of freedom of the press or freedom of religious worship, nor to publications privileged for medical instruction, privileged as official law enforcement bulletins or publications, nor to publications or reproductions of bona fide works of literature and the fine arts.

(3) No person shall, as a condition to a sale or delivery for resale of any publication not above-described or not within the purview of the foregoing section, require that the purchaser or consignee receive for resale or redistribution any other publication or article whatsoever within or reasonably believed by such purchaser or consignee to be within the purview of the foregoing section.

History: En. Secs. 1, 2, p. 255, L. 1891; amd. Sec. 560, Pen. C. 1895; re-en. Sec. 8391, Rev. C. 1907; re-en. Sec. 11134, R. C. M. 1921; amd. Sec. 1, Ch. 214, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Constitutionality

Justice Frankfurter in his dissenting opinion in the Winters Case considered this to be one of the statutes throughout the country that would fall under the majority decision in that case as "void for vagueness." Winters v. New York, 333 U S 523, 92 L Ed 853, 68 S Ct 674.

94-3602. (11135) **Penalty.** (1) Every person violating any of the provisions of the next preceding section is guilty of a misdemeanor, and provided further that upon the second and each subsequent conviction thereunder, a jail sentence is mandatory.

History: En. Sec. 561, Pen. C. 1895; re-en. Sec. 8392, Rev. C. 1907; re-en. Sec. 11135, R. C. M. 1921; amd. Sec. 2, Ch. 214, L. 1955.

Amendment

The 1955 amendment added the proviso clause.

Separability Clause

Section 3 of Ch. 214, Laws 1955 read "If any clause, sentence, paragraph, section, subdivision or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision or part directly adjudged to be invalid, inoperative or unconstitutional."

Repealing Clause

Section 4 of Ch. 214, Laws 1955 repealed all acts or parts of acts in conflict therewith.

CHAPTER 39—PUBLIC OFFICERS—OFFENSES BY

94-3908. (10828) Presenting fraudulent bills or claims for allowance, etc.

Operation and Effect

An information may be drawn consistent with section 94-1805 (obtaining money under false pretenses) which is not vulnerable to the objection that it is bad for duplicity for charging an offense under this section. State v. Hale, — M —, 291 P 2d 229, 234. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

94-3920. (10925) Importing persons to discharge duties, etc.

Operation and Effect

This section did not change the common-law rule respecting a sheriff's liability in damages. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

CHAPTER 41—RAPE AND OTHER SEXUAL CRIMES

Section 94-4120. Child under age of sixteen cannot be accomplice.

94-4101. (11000) Rape defined.

Statutory Rape

Any man who accomplishes an act of sexual intercourse with a female under the age of 18 years, when such female is not his wife, is guilty of the crime of statutory rape. The corpus delicti is sufficiently proved by the testimony of the prosecutrix that she had sexual intercourse with the accused at the time and place set forth in the information. State v. Reid, 127 M 552, 267 P 2d 986, 991.

References

Cited in State v. Lawrence, 122 M 277, 201 P 2d 756; State v. Sauter, 125 M 109, 232 P 2d 731, 734.

Bill of particulars to one accused of rape. 5 ALR 2d 559.

Inclusion or exclusion of day of birth in computing age of prosecutrix. 5 ALR 2d 1153.

Exclusion of women from juries in prosecutions for rape. 9 ALR 2d 661.

94-4109. (11008) Importation and exportation of females, etc.

Constitutionality

This section (94-4109) is void since Congress has legislated upon this matter in the Mann Act (U. S. C. Tit. 18, §§ 2421-2424). This section then, being in contravention of a valid law of the United States, is wholly void. Ex Parte Anderson, 125 M 331, 238 P 2d 910, 911, 912.

94-4118. (11030) Crime against nature.

References

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 996.

94-4120. Child under age of sixteen cannot be accomplice. No child under the age of sixteen (16) years can be an accomplice to the commission or attempted commission of the infamous crime against nature.

History: En. Sec. 1, Ch. 68, L. 1951; amd. Sec. 1, Ch. 145, L. 1957.

Title of Act

An act declaring a child under the age of fourteen years incapable of being an accomplice to the infamous crime against nature.

Amendment

The 1957 amendment substituted "sixteen (16) years" for "fourteen (14) years" and inserted the words "or attempted commission."

Repealing Clauses

Section 2 of Ch. 68, Laws 1951 and Sec. 2 of Ch. 145, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 68, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 23, 1951.

CHAPTER 42—RESCUES AND ESCAPES

94-4202. (10865) Retaking goods from custody of officer.

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified as for violation of this section since officer did not have check in his possession under any process of law. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

94-4203. (10866) Escapes from state prison—punishment.

References

Cited or applied in State ex rel. Ball v. Burrell, — M —, 292 P 2d 144.

CHAPTER 44—SEDITION—CRIMINAL SYNDICALISM—DISPLAY OF RED FLAG—SUBVERSIVE ORGANIZATIONS

Section 94-4411. Subversive Organization Registration Law—title of act.
94-4412. Purpose of act.
94-4413. Subversive organization defined.
94-4414. Organization subject to foreign control defined.
94-4415. Exceptions from definition of subversive organization.
94-4416. Organization pursuant to law—no exemption.
94-4417. Rules and regulations.
94-4418. Information filed with secretary of state.
94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state.
94-4420. Change of officers or purposes—filing with secretary of state.
94-4421. Semiannual statement of members.
94-4422. Report of meetings authorizing political action.
94-4423. Statements filed with secretary of state are public records.
94-4424. Anonymous letters prohibited.
94-4425. Penalty of organization for violating act.
94-4426. Penalty of officer of organization.
94-4427. Penalty of member of organization.

94-4411. Subversive Organization Registration Law—title of act. This act may be cited as the "Subversive Organization Registration Law."

History: En. Sec. 1, Ch. 215, L. 1951.

Title of Act

An act providing for the registration of certain societies, corporations, associations, political parties, assemblies, and other bodies and organizations; defining "subversive organizations," and requiring such organizations to file reports, documents and information with the secretary of state, and providing for the making of rules and regulations by the secretary of state; prohibiting the sending and delivery to nonmembers of letters, leaflets, and other written or printed matter, unless the same bears the name of such organization and the names and addresses of its officers; and providing penalties for violations of this act.

94-4412. Purpose of act. This act is adopted in the exercise of the police power of this state for the protection of the public peace and safety by requiring the registration of subversive organizations which are con-

ceived and exist for the purpose of undermining and eventually destroying the democratic form of government in this state and in the United States.

History: En. Sec. 2, Ch. 215, L. 1951.

94-4413. Subversive organization defined. As used in this title, "subversive organization" means every corporation, association, society, camp, group, political party, assembly, and everybody or organization composed of two [2] or more persons or members, which comes within all or any of the following descriptions:

(a) Which directly or indirectly advocates, advises, teaches, or practices, the duty, necessity, or propriety of controlling, conducting, seizing, or overthrowing the government of the United States, of this state, or of any political subdivision thereof by force or violence;

(b) Which is subject to foreign control as defined in section 4 [94-4414] hereof.

History: En. Sec. 3, Ch. 215, L. 1951.

94-4414. Organization subject to foreign control defined. An organization is "subject to foreign control" if it comes within either of the following descriptions:

(a) It solicits or accepts financial contributions, loans, or support of any kind directly or indirectly from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or political subdivision thereof, a political party in a foreign country, or an international political organization;

(b) Its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, a political party in a foreign country, or an international political organization.

History: En. Sec. 4, Ch. 215, L. 1951.

94-4415. Exceptions from definition of subversive organization. "Subversive organization" does not include any labor union or religious, fraternal, or patriotic organizations, society, or association whose objectives and aims do not contemplate the overthrow of the government of the United States, of this state or of any political subdivision thereof by force or violence.

History: En. Sec. 5, Ch. 215, L. 1951.

94-4416. Organization pursuant to law—no exemption. This act imposes additional requirements upon corporations, associations, or organizations which are subversive organizations. Neither the fact that such a corporation, association, or organization was organized pursuant to law nor that its affairs and activities are in any respect regulated by law exempts it from complying with this title.

History: En. Sec. 6, Ch. 215, L. 1951.

94-4417. Rules and regulations. The secretary of state may adopt and promulgate such rules and regulations as may be necessary to carry out

the provisions of this title, and may alter, amend, or repeal such rules and regulations.

History: En. Sec. 7, Ch. 215, L. 1951.

94-4418. Information filed with secretary of state. Every subversive organization in existence on July 1, 1951, shall within thirty (30) days after that date, and every subversive organization thereafter organized shall within ten (10) days after its organization, file with the secretary of state, on such forms and in such detail as he may prescribe, the following information and documents:

(a) A complete and detailed statement subscribed, under oath, by all of its officers, showing all of the following:

(1) Its name and post office address;

(2) The names and addresses of all its branches, chapters, and affiliates;

(3) The names, nationalities, and residence addresses of its officers and members, and the qualifications required for membership in it;

(4) The nature and extent of its existing and proposed aims, purposes, and activities;

(5) The times and places of its meetings;

(6) The description and location of the real property and the kind, quantity, and quality of the personal property owned by it, its assets and liabilities, the methods for the financing of its activities, and the names and addresses of all persons, organizations, and other sources who or which have contributed money, property, literature, or other things of value to the organization or any of its branches, chapters or affiliates for any of its purposes;

(7) Such other information as the secretary of state may from time to time require.

(b) A true copy, certified by all of its officers, of all of the following:

(1) Its charter, articles of association, or constitution, and its by-laws, rules, and regulations;

(2) Its oath, affirmation, or pledge of membership, if any;

(3) Each agreement, resolution, and other instrument or document relating to its organization, powers, and purposes, and the powers and duties of its officers and members;

(4) Each book, pamphlet, leaflet, or other printed, written, or illustrated matter directly or indirectly issued or distributed by it or in its behalf, or to or by its members with its knowledge, consent, or approval;

(5) Such other documents as the secretary of state may from time to time require.

(c) A description of the uniforms, badges, insignia, or other means of identification prescribed by it, and worn or carried by its officers or members, or any of such officers or members.

(d) In case it is subject to foreign control, a statement of the manner in which it is subject.

History: En. Sec. 8, Ch. 215, L. 1951.

94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state. Every subversive organization shall within ten (10) days after any revision or amendment of, or other change

with respect to, its charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or any part thereof, file with the secretary of state a true copy certified by all of its officers of the revised, amended, or changed charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or part thereof.

History: En. Sec. 9, Ch. 215, L. 1951.

94-4420. Change of officers or purposes—filing with secretary of state. Every subversive organization shall within ten (10) days after a change has been made in its officers, or in its aims, purposes, activities, property holdings, or methods and sources of financing its activities, file with the secretary of state a statement subscribed under oath by all of its officers showing the change.

History: En. Sec. 10, Ch. 215, L. 1951.

94-4421. Semiannual statement of members. Every subversive organization shall at least once in each period of six (6) months file with the secretary of state a statement subscribed under oath by all of its officers showing the names and residence addresses of all persons who have been admitted to membership during that period or, if no members have been admitted during that period, a statement to that effect similarly subscribed.

History: En. Sec. 11, Ch. 215, L. 1951.

94-4422. Report of meetings authorizing political action. Every subversive organization shall within ten (10) days after the adoption thereof file with the secretary of state, on such form and in such detail as he may prescribe, each resolution adopted, or the minutes of any meeting held by it, authorizing or providing for concerted action by its officers, members, or a part of its membership, to promote or prevent the passage of any act of legislation by any local, state, or federal legislative body, or to support or defeat any candidate for public office.

History: En. Sec. 12, Ch. 215, L. 1951.

94-4423. Statements filed with secretary of state are public records. All statements or documents filed with the secretary of state under this title [94-4411 to 94-4427] are public records and shall be open to public examination and inspection at all reasonable hours.

History: En. Sec. 13, Ch. 215, L. 1951.

94-4424. Anonymous letters prohibited. A subversive organization shall not send, deliver, mail or transmit, or suffer or permit to be sent, delivered, mailed, or transmitted, to any person in this state who is not a member of the organization any anonymous letter, document, leaflet, or other written or printed matter. All letters, documents, leaflets, or other written or printed matter issued by a subversive organization which are intended to come to the attention of a person who is not a member of the organization shall bear the name of the organization and the name and residences of its officers.

History: En. Sec. 14, Ch. 215, L. 1951.

94-4425. Penalty of organization for violating act. Any subversive organization which violates any provisions of this title [94-4411 to 94-4427]

is guilty of a felony punishable by fine of not less than one thousand dollars ($1,000.00) nor more than ten thousand dollars ($10,000.00). Any such violation constitutes a separate and distinct offense for each day, or part thereof, during which it is continued.

History: En. Sec. 15, Ch. 215, L. 1951.

94-4426. Penalty of officer of organization. Any officer or member of the board of directors, board of trustees, executive committee, or other similar governing body of a subversive organization who violates any provision of this title [94-4411 to 94-4427], or permits or acquiesces in the violation of any provision of this title by the organization is guilty of a felony punishable by fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00), or by imprisonment in a state prison for not less than six (6) months nor more than five (5) years, or by both.

History: En. Sec. 16, Ch. 215, L. 1951.

94-4427. Penalty of member of organization. Any person who becomes or remains a member of any subversive organization, or attends a meeting thereof, with knowledge that the organization has failed to comply with any provision of this title [94-4411 to 94-4427], is guilty of a misdemeanor punishable by fine of not less than ten dollars ($10.00) nor more than one thousand dollars ($1,000.00), or by imprisonment in the county jail for not less than ten (10) days nor more than one (1) year, or by both.

History: En. Sec. 17, Ch. 215, L. 1951.

Separability of Provisions

Section 18 of Ch. 215, L. 1951 read, "If any provision of this act or the application thereof to any person, corporation, association, organization, or circumstances, is for any reason held invalid, ineffective, or unconstitutional by a court of competent jurisdiction, the remainder of this act, or the application of such provision to other persons, corporations, associations, organizations, or circumstances, shall not be affected thereby, and the legislative assembly hereby declares the severability of the several sections and provisions of this act, and that it would have enacted the same without the invalid provisions or the invalid applications, as the case may be, had such invalidity been apparent."

CHAPTER 47—PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS

Section 94-4720. Civil rights of convict suspended.

94-4708. (11588) **Removal from office for neglect of official duty.**

Operation and Effect

This section does not restrain or limit the power of the governor to remove the third member of the unemployment compensation commission. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-4710. (11590) **Attempts to commit crime, when punishable.**

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1061 (dissenting opinion).

94-4720. (11600) **Civil rights of convict suspended.** A sentence of imprisonment in the state prison for any term less than life suspends all the civil rights of the person so sentenced, and forfeits all public offices and private trusts, authority, or power, during such imprisonment. The governor has power to restore to citizenship any person convicted of any offense committed against the laws of the state, upon cause being shown,

either after the expiration of sentence, or after pardon. The governor may request an investigation by the board of pardons to determine if such restoration to citizenship be advisable.

History: En. Sec. 154, p. 217, Bannack Stat.; re-en. Sec. 186, p. 313, Cod. Stat. 1871; re-en. Sec. 213, 4th Div. Rev. Stat. 1879; re-en. Sec. 279, 4th Div. Comp. Stat. 1887; amd. Sec. 1239, Pen. C. 1895; re-en. Sec. 8904, Rev. C. 1907; re-en. Sec. 11600, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1955. Cal. Pen. C. Sec. 673.

Amendment

The 1955 amendment added the second and third sentences.

Effective Date

Section 2 of Ch. 87, Laws 1955 provided the act should be in effect from and after April 1, 1955.

94-4723. (11603) Convict competent witness.

Proper Method to Impeach

Where a defendant upon cross-examination admits his prior convictions of felonies it is error for the court to then allow the state to introduce into evidence the judgment record of prior convictions, for it serves no useful purpose since the credibility has already been impeached and it may weigh too heavily against the defendant. State v. Coloff, 125 M 31, 231 P 2d 343, 344.

CHAPTER 48—RIGHTS OF DEFENDANT

94-4801. (11606) No person punishable but on legal conviction.

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-4804. (11609) Parties to a criminal action.

References

Cited or applied in State v. MacLean, — M —, 291 P 2d 250, 252.

94-4806. (11611) Rights of defendant in a criminal action.

Impartial Jury

Trial court was in error for refusing to grant the defendant a change of venue where evidence disclosed that local newspaper had fanned the feeling of the community against the defendant, that the local people believed the defendant to be guilty, and that the county officials themselves felt that the feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

CHAPTER 49—DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS —JURISDICTION OF COURTS

94-4916. (11630) Jurisdiction of justices of the peace.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 662; State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

CHAPTER 53—SUPPRESSION OF RIOTS

94-5304. (11658) Magistrates and officers to command rioters to disperse.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable in damages for damage caused by mob violence. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

94-5305. (11659) To arrest rioters if they do not disperse.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable in damages for damage caused by mob violence. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

94-5314. Liability of officers for neglect of duties, etc.

Liability of Sheriff

There was no provision imposing liability for damages upon the sheriff prior to the enactment of this law. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

CHAPTER 55—REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACHMENT

94-5501. (11687) Officers subject to removal.

Operation and Effect

These sections do not restrain or limit the governor's power of removal of the third member on the unemployment compensation commission. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-5516. (11702) Removal of public officers by summary proceedings.

Disqualification of Judge

Proceedings under this section for the removal of a public officer are governed by the rules of practice in civil cases and therefore subd. 4 of section 93-901 relating to disqualification of judges applies. This rule is inapplicable however to prosecutions under the section for the charging and collecting of illegal salaries or fees. State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, 455.

Operation and Effect

Under this section of the Code it is the public policy of the state, in cases where a county officer is charged with collecting illegal fees, that such officer be entitled, as a matter of defense, to offer evidence of his good faith or honest mistake and the value received by the county. State v. Hale, 126 M 326, 249 P 2d 495, 496.

Time for Appearance of Party

That portion of this section providing that the court must cite a party to appear "at a time not more than ten nor less than five days from the time the accusation was presented" is directory rather than mandatory. State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, 454.

In computing time under the provision of this section which provides that the court must cite the party to appear "not more than ten nor less than five days" both the first and last days should be excluded. State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

CHAPTER 57—TIME OF COMMENCING CRIMINAL ACTIONS

94-5703. (11724) Limitation of one year in misdemeanors.

References

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 59—WARRANT OF ARREST—PROCEEDINGS ON EXECUTION THEREOF

94-5904. (11736) To what peace officers warrants are to be directed.

Operation and Effect

The sheriff of Flathead County has authority to arrest person in Powell County under warrant issued in Flathead County upon such person's release from prison. Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

References

Cited or applied in State v. MacLean, — M —, 291 P 2d 250, 252.

94-5905. (11737) To what peace officers warrants are to be directed, etc.

References

Cited or applied in In re Malone, — M —, 299 P 2d 455.

CHAPTER 60—ARRESTS—BY WHOM AND HOW MADE—CLOSE PURSUIT—RETAKING AFTER ESCAPE

94-6003. (11753) **Arrests by peace officers.**

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified by alleging a violation of sections 94-35-169 and 94-4202. Harrer v. Montgomery Ward & Co, 124 M 295, 221 P 2d 428, 435.

References

Cited or applied in State v. Storm, 124 M 102, 220 P 2d 674, 677; State v. Mac Lean, — M —, 291 P 2d 250, 252.

94-6005. (11755) **Magistrate may order arrest.**

References

Cited or applied in State v. MacLean, — M —, 291 P 2d 250, 252.

94-6009. (11759) **Warrant must be shown, when.**

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

94-6016. (11766) **Person arrested without a warrant to be taken before, etc.**

References

Cited or applied in State v. MacLean, — M —, 291 P 2d 250, 252.

94-6017. (11767) **Arrest by telegraph.**

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

CHAPTER 61—EXAMINATION AND COMMITMENT OR DISCHARGE OF DEFENDANT

94-6101. (11773) **Magistrate to inform the defendant of the charge, etc.**

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-6116. (11788) **Order for bail on commitment.**

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 440.

CHAPTER 62—PRELIMINARY PROVISIONS—FILING THE INFORMATION

94-6201. (11798) **Offenses, how prosecuted.**

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6206. (11803) **Duty of court when county attorney does not file, etc.**

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6207. (11804) **Information may be amended.**

Operation and Effect

Where court allowed state to amend information charging defendant with incest by changing "fornication" to "adultery" there was no substantial change in the charge and only touched a matter of form. Whether the defendant was married or unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse

charged is proved. State v. Kuntz, — M —, 295 P 2d 707, 710.

Waiver of Objection

Where, after plea of not guilty, county attorney asked permission to amend information and counsel for defendant stated there was no objection, any objection to the amendment of the information to include a prior conviction was waived. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

94-6208. (11805) Indorsement on information.

Application

The reason for the statutory requirement that the names of witnesses be indorsed on the information is to safeguard defendant against surprise and unfair advantage. There was no unfair advantage taken of defendant when the county attorney indorsed the name of a witness after impaneling a jury because he did not know of the existence of the witness at the time when the information was filed and gave notice to the defendant's attorney at that time and offered to agree to a reasonable delay in the trial in order that the defendant could examine the witness and secure evidence to meet his testimony. State v. Phillips, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 63—THE GRAND JURY—ITS FORMATION—POWERS AND DUTIES—FINDING AND PRESENTING AN INDICTMENT

94-6314. (11819) Retirement of the grand jury—discharge of.

"Final Adjournment" When Court Always Open

Although district court is always open and each term continues until succeeding term, the terms as fixed by the court limit the existence of the grand jury, the beginning of each term constituting a "final adjournment" of the preceding term within the meaning of this section. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

94-6324. (11829) When and from whom they may ask advice, etc.

Special Prosecutor—Appearance Before Grand Jury

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judges appointing such special prosecutor when the county attorney was present and able to act could not give such authority. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

94-6331. (11836) Names of witnesses inserted at foot of indictment.

Appeal After Conviction

If person has gone to trial under indictment with witnesses names designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Failure to Endorse Names—Effect

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

If there were no witnesses it was the duty of the prosecution, on objection of defendant, to so state, either by a verified pleading or under oath. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Fictitious Names

If there were witnesses identified as John Doe and Richard Roe it is indefensible for the prosecution to conceal their identity from accused merely because the prosecutor believes that a disclosure of their true names is not vital or necessary to prepare a defense. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Operation and Effect

The statute requires the endorsement of names of all witnesses, not merely the names of witnesses the state believes to be important. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1041.

94-6332. (11837) Indictment, how presented and filed.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6333. (11838) Indictment to be signed by prosecuting attorney, etc.

References

Cited or applied in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1046.

94-6334. (11839) Warrant to issue.

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

CHAPTER 64—RULES OF PLEADING AND FORM OF INFORMATION AND INDICTMENT

94-6401. (11841) Forms and rules of pleading.

Operation and Effect

No section of the Criminal Code can be found directing or requiring a bill of particulars to be furnished to a defendant; therefore, no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6403. (11843) Indictment or information, what to contain.

Bill of Particulars

In a criminal case no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary in State v. Gondeiro, 82 M 530, 268 P 507; State v. Shannon, 95 M 280, 26 P 2d 360; State v. Stevens, 104 M 189, 65 P 2d 612; State v. Hahn, 105 M 189, 72 P 2d 459; State v. Robinson, 109 M 322, 96 P 2d 265, and any other such statements or holdings by this court.)

References

Cited or applied in State v. Tursich, 127 M 504, 267 P 2d 641, 643.

94-6404. (11844) Form of.

References

Cited or applied in State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6405. (11845) It must be direct and certain.

Bill of Particulars Not Available

In a criminal case no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary made by the court.)

94-6407. (11847) Must charge but one offense and in one form, etc.

Election of Charge

Every act of sexual intercourse constituting rape is a separate offense and where the information charges defendant and another jointly with accomplishing "an act of sexual intercourse" and the evidence is that defendant accomplished an act of sexual intercourse and also that he assisted the other in the act of intercourse the court should have granted the defendant's motion that the state elect whether it was prosecuting defendant for his accomplished intercourse with the prosecutrix or for aiding and assisting the other defendant in consummating the other defendant's sexual intercourse with the prosecutrix. State v. Sauter, 125 M 109, 232 P 2d 731, 734.

94-6412. (11852) Indictment or information, when sufficient.

References

Cited in State v. Tursich, 127 M 504, 267 P 2d 641, 643.

94-6423. (11863) **Distinction between accessory before the fact, etc.**

Instructions

Where a verbal declaration of one codefendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-204, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. State v. Keller, 126 M 142, 246 P 2d 817, 821.

Operation and Effect

Under this section and section 94-204, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. State v. Simon, 126 M 218, 247 P 2d 481, 485.

94-6428. (11868) **Of what offense a defendant may be convicted.**

Verdict for Lesser Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

94-6434. (11874) **When not material.**

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

CHAPTER 65—ARRAIGNMENT OF DEFENDANT

Section 94-6513. Compensation of attorney for accused.

94-6501. (11875) **Defendant must be arraigned in the court, etc.**

Admissibility of confession as affected by delay in arraignment of prisoner. 19 ALR 2d 1331.

94-6513. (11887) **Compensation of attorney for accused.** Whenever, in a criminal action or proceeding in the district court, an attorney-at-law defends a person charged with any offense, by order of the court, on the ground that the accused is unable to procure or employ counsel, the county in which such criminal action or proceeding may have arisen is liable to pay such attorney for his services such sum as the judge certifies to be a reasonable compensation therefor.

History: En. Sec. 1, p. 12, L. 1881; re-en. Sec. 197, 3d Div. Comp. Stat. 1887; amd. Sec. 1892, Pen. C. 1895; amd. Sec. 1, Ch. 33, L. 1903; re-en. Sec. 9189, Rev. C. 1907; re-en. Sec. 11887, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1949.

Amendment

The 1949 amendment omitted a portion of this section which placed specific limitations on the amount allowed as follows, capital cases not to exceed $100, other felonies not to exceed $50, and in other cases not to exceed $25.

Repealing Clause

Section 2 of Ch. 38, Laws 1949 repealed all acts or parts of acts in conflict therewith.

References

Cited or applied in State ex rel. Irvine v. District Court, 125 M 398, 239 P 2d 272, 281.

CHAPTER 66—SETTING ASIDE THE INDICTMENT OR INFORMATION

94-6601. (11891) Indictment, when set aside on motion.

Failure To Endorse Names on Indictment

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Indictment must be set aside where witnesses names on indictment were Richard Roe and John Doe and witnesses real names were not supplied to defendant and if there were no witnesses that fact should be shown by the prosecution either by a verified pleading or under oath. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043. (In this case it was said that if other grounds had not required setting aside of indictment, court would have been disposed to return case to trial court to permit defendant to interrogate prosecutor and grand jury foreman as to whether there were witnesses whose names were not endorsed on indictment.)

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Grounds Exclusive

The grounds for setting aside an indictment of a grand jury as set forth in this section are exclusive. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1037.

Presence of Unauthorized Person

Where there has been a violation of subd. 3 of this section the accused need not show prejudice, but the very appearance of an unauthorized person before the grand jury is sufficient to set aside the indictments. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

Presence of Unauthorized Person—Special Prosecutor Before Grand Jury

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

Presence While Indictment under Consideration

A case is "under consideration" before the grand jury within the meaning of subsection 3 of this section when witnesses are being examined. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1044.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279; State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6602. (11892) Defendant waives objections, etc.

Amendment of Information

There was no error in permitting information to be amended to allege prior conviction when there was no objection by defendant and defendant's attorney consented to its filing. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

References

Cited or applied in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1038.

94-6603. (11893) Motion, when heard—if denied or granted, etc.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

94-6604. (11894) Effect of order of resubmission.

Cross-Reference

See note to sec. 94-6605. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

94-6605. (11895) Order no bar to another prosecution.

Operation and Effect

Where district court was ordered to set aside indictment on ground set forth in subd. 3 of section 94-6601, prosecution for the offenses charged was not barred but the cases were ordered resubmitted to the county attorney in accordance with section 94-6604 for the filing of such information as he believes necessary. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

CHAPTER 67—DEMURRER

94-6701. (11896) Pleading on part of defendant.

Operation and Effect

This section is exclusive and there is no section of the Criminal Code directing or requiring a bill of particulars to be furnished to a defendant charged with a criminal offense. State v. Bosch, 125 M 566, 242 P 2d 477, 487.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859.

94-6702. (11897) Demurrer on plea, when put in.

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. State v. Hale, — M —, 291 P 2d 229, 230. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

94-6703. (11898) Grounds of demurrer.

Facts Stated Do Not Constitute a Public Offense

Information charging a violation of section 94-1805 (obtaining money under false pretenses) which only avers that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. State v. Hale, — M —, 291 P 2d 229, 232. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

Sufficiency of Information

An information which charges defendant with an infamous act against nature and then in describing the manner in which the crime was committed it alleged an assault, it is not open to the charge that it is duplicitous. Allegations with respect to the assault are merely descriptive of the means of accomplishing the infamous crime against nature which never could be perpetrated against an unwilling participant without an assault. State v. McSloy, 127 M 265, 261 P 2d 663, 664.

References

Cited or applied in State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6711. (11906) Objections, forming ground of demurrer, when taken.

References

Cited or applied in State v. Hale, — M —, 291 P 2d 229, 233; State v. MacLean, — M —, 291 P 2d 250, 251.

CHAPTER 68—PLEAS

94-6801. (11907) The different kinds of pleas.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861; State v. Porter, — M —, 300 P 2d 952, 954.

94-6802. (11908) Plea, how put in and its form.

Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written special plea in bar and ordering the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-100-4. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 861.

94-6803. (11909) Plea of guilty, how put in and when withdrawn.

Denial of Motion to Withdraw

Denial of motion to withdraw plea of guilty will not be reversed where chief contention was that he was misled by the erroneous advice of counsel as to his guilt under the law, when from the record of the trial court there was evidence which would have justified a finding of guilty, regardless of the correctness of the counsel's interpretation of the law. State v. Nance, 120 M 152, 184 P 2d 554, 561.

Discretion of Court

The granting or refusal of permission to withdraw a plea of guilty and substitute a plea of not guilty rests in the discretion of the trial court and is subject to review only where an abuse of discretion is shown. State v. Nance, 120 M 152, 184 P 2d 554, 560.

Guilty Plea Under Agreement with Prosecutor

While the supreme court will not encourage the making of bargains with persons charged of crime, where a defendant has changed his plea of not guilty to a plea of guilty on an agreement with the prosecuting attorney as to recommendation for sentences which were carried out, the supreme court, will not, after he obtained the benefits of the agreement, aid him in escaping its obligations, by ordering a withdrawal of the guilty plea. State v. Nance, 120 M 152, 184 P 2d 554, 561.

Motion to Withdraw—Time for Filing

In order to receive favorable consideration an application to withdraw a plea of guilty should be made within a reasonable time. State v. Nance, 120 M 152, 184 P 2d 554, 561.

When Plea of Guilty may be Withdrawn after Judgment

Where the evidence discloses that there was a grave doubt that the defendant had the mental capacity to appreciate and understand what he was doing and the consequences thereof, when without benefit of counsel, he pleaded guilty to the charge of murder, defendant should have been allowed to withdraw his plea of guilty and enter a plea of not guilty. State v. Dryman, 125 M 500, 241 P 2d 821.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859.

94-6805. (11911) What may be given in evidence under plea of not guilty.

Operation and Effect

The bar to a prosecution for misdemeanor where defendant is not brought to trial within six months after the filing of the information as provided for in section 94-9507 may properly be raised by a plea of not guilty. State v. Porter, — M —, 300 P 2d 952, 954.

CHAPTER 69—CHANGE OF PLACE OF TRIAL

94-6901. (11916) What petition to contain.

Application

Trial court was in error for refusing to grant a change of venue where evidence disclosed that local newspapers had fanned the feeling of the community against the defendant and that county officials themselves felt that feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Change of Place of Trial

Where Supreme Court ordered a new trial and that it be had in some county not adjacent to Toole county because of the prejudice of the people in Toole county, trial court erred in directing that the new trial take place in Teton county. Although Teton county is not adjoining Toole county but is separated by some twenty miles, yet the word adjacent has no arbitrary meaning or definition; the term is a relative and not an absolute one, and the exact meaning of which, in any particular case, is determinable principally by the context in which it is used. State ex rel. Dryman v. District Court, 128 M 402, 276 P 2d 969, 970.

94-6906. (11921) When change of place of trial not granted.

References

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 999.

CHAPTER 70—MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OF ISSUES—POSTPONEMENT OF TRIAL

94-7002. (11929) How tried.

Directed Verdict in Criminal Case

In a prosecution for unlawfully driving a truck with an overload which is a misdemeanor, it was error for the court to instruct and direct the jury to return a verdict of guilty where the evidence as to the true weight of the truck was in conflict as shown by two different state police scales. State v. Baillargeron, 126 M 310, 249 P 2d 799, 801.

References

Cited or applied in State v. Winter, — M —, 285 P 2d 149, 159.

94-7004. (11931) When presence of defendant is necessary on the trial.

Absence of accused at return of verdict in felony case. 23 ALR 2d 456.

Impaneling or selection of jury in accused's absence. 26 ALR 2d 762.

94-7005. (11932) Formation of trial jury.

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case. 1 ALR 2d 1291.

Indoctrination by court of persons summoned for jury service as infringing constitutional right of trial by jury. 2 ALR 2d 1104.

Exclusion of women from grand or trial jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction. 9 ALR 2d 661.

94-7013. (11940) Case set for trial.

References

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 71—CHALLENGING THE JURY

94-7115. (11955) Number of peremptory challenges.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7116. (11956) Challenges of state.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7119. (11959) Particular causes of challenge.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7120. (11960) Ground of challenge for implied bias.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7127. (11967) Decision of court to be entered.

Overruling Challenge

Where court relied on answers to last two questions and on the assumption that there was a misunderstanding as to the earlier questions in examining a prospective juror for prejudice, the overruling of the challenge would not be disturbed especially where the defendant had three peremptory challenges left at the time and exercised one to discharge such juror, and fact that defendant regarded other jurors as undesirable on which he might have exercised his challenge gave him no right to have such juror excused for bias where there was no showing that such jurors were disqualified. State v. Allison, 122 M 120, 199 P 2d 279, 286.

CHAPTER 72—THE TRIAL

94-7201. (11969) Order of trial.

Instructions

Objections

Objection to instruction that it "is not a correct statement of the law; it is not applicable to the facts in this case" does not comply with this section. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Objection to instruction that "it is repetitious and not a correct statement of the law" does not comply with this section. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Any error in giving instructions is not available to appellants on appeal where the record shows no objections made by the appellants. State v. Holt, 121 M 459, 194 P 2d 651, 654.

Where instructions as finally proposed to be given were not objected to by counsel for defendant, the district court by statute was expressly forbidden to grant a new trial and the Supreme Court is forbidden to reverse the cause, even if error existed in such instructions. State v. Donges, 126 M 341, 251 P 2d 254, 255.

94-7203. (11971) Defendant presumed innocent—reasonable doubt.

Operation and Effect

In a prosecution for the crime of carrying a concealed weapon; wherein the defendant was found guilty by a jury, it was held on appeal that in view of the uncertainty in the mind of the state's only eyewitness as compared with witnesses for the defendant, coupled with the effect of this section, the evidence was not sufficient to justify a conviction for the crime charged. State v. Gilbert, 125 M 104, 232 P 2d 338, 341.

94-7209. (11977) Rules of evidence in civil actions, etc.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 976 (dissenting opinion); State v. Piveral, 127 M 427, 265 P 2d 969, 970 (dissenting opinion); State v. Reid, 127 M 552, 267 P 2d 986, 990.

94-7220. (11988) Conviction on testimony of accomplice.

Cross-Reference

Child under sixteen not an accomplice to commission of infamous crime against nature, sec. 94-4120.

Corroboration

The evidence which corroborates the testimony of an accomplice could be furnished by the defendant. It could be circumstantial. It need not extend to every fact to which the accomplice testified and need not be sufficient to justify a conviction or establish a prima facie case of guilt: it being sufficient if it tends to connect defendants with the commission of the crime. Whether it tends to do so is a question of law, while its weight—its efficacy to fortify the testimony of the accomplice and render his story trustworthy—is a matter for the consideration of the jury. State v. Donges, 126 M 341, 251 P 2d 254, 257.

Instructions

Where the defense requested instructions as to the effect of accomplice's testimony and there was evidence in the record from which the jury might have concluded that a deputy sheriff was an accomplice of the defendant, the court should have instructed the jury that if they believed the deputy sheriff was an accomplice then they must weigh his evidence as provided by section 93-2001-1, subd. 4 and also that such evidence must be corroborated as required by this section. State v. Porter, 125 M 503, 242 P 2d 984, 990.

Operation and Effect

In a sodomy case, court should have given the requested instructions of the defendant to the effect that if the jury finds the prosecuting witness was an accomplice, then the jury must acquit the defendant, where the only evidence connecting the defendant with the commission of the crime was the testimony of the prosecuting witness. State v. Searle, 125 M 467, 239 P 2d 995, 998.

Person Making Forged Instrument Not Accomplice of Person Passing Forged Instrument

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument. The person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

94-7227. (11995) When evidence on either side is closed, etc.

Directing Jury to Acquit Defendant

Where there is an utter failure or lack of evidence to establish the states case court may direct the jury to return a verdict for the defendant. State v. Widdicombe, — M —, 301 P 2d 1116, 1118.

References

Cited or applied in State v. Perez, 126 M 15, 243 P 2d 309, 311; State v. Allen, 128 M 306, 275 P 2d 200, 205.

94-7228. (11996) View of place of offense or property.

Condition of Premises

The fact that the premises to be viewed had accumulated dirt which had been hastily swept away, that doors had been replaced and the view was bleak and morbid furnished no ground for interfering with an order permitting a view of the premises. State v. Allison, 122 M 120, 199 P 2d 279, 292.

Discretion of Court

The matter of permitting the jury to view the premises rests entirely in the discretion of the trial court which will not be interfered with except in case of manifest abuse. State v. Allison, 122 M 120, 199 P 2d 279, 292.

94-7230. (11998) Jurors, separation of, during trial.

Separation of jury in criminal case. 21 ALR 2d 1088.

CHAPTER 74—THE VERDICT

94-7407. (12023) Jury may find upon charge of previous conviction.

Plea of Guilty

This statute contemplated that the answer to charge or allegation of prior conviction should be an admission or denial, but a plea of guilty is an admission of the charge. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248, 249.

CHAPTER 75—BILLS OF EXCEPTION

94-7504. (12040) Exceptions, how settled by supreme court.

References

Cited or applied in State ex rel. Toner v. District Court, 127 M 603, 256 P 2d 1095.

94-7507. (12044) Settlement of bills of exceptions.

Provisions Mandatory

Compliance with this section is mandatory. State v. Kuntz, — M —, 295 P 2d 707, 708.

Where the time for presenting the bill of exceptions to the judge has expired the judge has lost jurisdiction after that to settle any bill of exceptions for the defendant. Such jurisdiction, once lost, could not be reinvested in the trial judge even by the stipulation of counsel. State v. Kuntz, — M —, 295 P 2d 707, 708.

94-7508. (12045) Record on appeal in criminal cases.

Dismissal of Appeal

The state's motion to dismiss an appeal will be granted where the defendant, although filing a notice of appeal, did not have settled or allowed a bill of exceptions, and omitted to file a transcript or briefs in the Supreme Court when no extension of time has been granted and no showing that the appellant's failure and omission has been without laches on his part. State v. McDonald, 125 M 201, 232 P 2d 997.

CHAPTER 76—NEW TRIALS

94-7602. (12047) Its effect.

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. State v. Hale, — M —, 291 P 2d 229, 230. (Dissenting opinion, — M —, 291 P 2d 229, 236.)

94-7603. (12048) **Grounds for granting new trial.**

References

Cited or applied in State v. Winter, — M —, 285 P 2d 149, 159.

CHAPTER 78—JUDGMENT—SUSPENSION OF SENTENCE AND PROBATION

Section 94-7821. Court may suspend sentence, when.
94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification.
94-7824. Effect of suspended sentence.
94-7831. Investigation.
94-7832. Sentence.
94-7833. Information from courts.
94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon.

94-7821. (12078) **Court may suspend sentence, when.** In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this state, and it appears that the defendant has never before been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, said court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents. Any judge, who has suspended a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence to revoke such suspension and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with his court as is authorized by him or his successor. Prior to such revocation of the order of such suspension, the person affected shall be given a hearing before said judge.

History: En. Sec. 1, Ch. 21, L. 1913; re-en. Sec. 12078, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1937; amd. Sec. 1, Ch. 194, L. 1955.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification. When any judge has suspended a sentence of imprisonment as provided in section 94-7821, and has not ordered the prisoner placed under the jurisdiction of the state board of pardons, but has retained jurisdiction with the court, the clerk of said court shall nevertheless mail a full copy of the judgment of the court and the order suspending the sentence and certify the same to the state board of pardons, and bureau of identification at the state prison, or if the defendant would have been confined to an institution other than the state

prison, then a copy shall be sent to the institution to which said court would have committed the defendant but for the suspending of the sentence.

History: En. Sec. 1, Ch. 40, L. 1939; amd. Sec. 2, Ch. 194, L. 1955.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

Propriety and effect of court's indication to jury resulting in recommendation of suspended sentence. 8 ALR 2d 1001.

94-7823. (12079) **Repealed.**

Repeal

This section (Sec. 2, Ch. 21, L. 1913; amd. Sec. 1, Ch. 53, L. 1935; amd. Sec. 1, Ch. 65, L. 1953), relating to persons not entitled to probation, was repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7824. (12080) **Effect of suspended sentence.** Whenever a sentence to any penal or other institution in this state has been imposed, but the execution thereof has been suspended and the defendant placed on probation, the effect of such order of probation shall be to place said defendant under the control and management of the state board of pardons and he shall be subject to the provisions of the probation, parole and executive clemency act.

History: En. Sec. 3, Ch. 21, L. 1913; re-en. Sec. 12080, R. C. M. 1921; amd. Sec. 3, Ch. 194, L. 1955.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners" and "subject to the provisions of the probation, parole and executive clemency act" for "subject to the same rules and regulations as applied to persons paroled from said institutions after a period of imprisonment therein."

Repealing Clause

Section 4 of Ch. 194, Laws 1955 read "That sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith, be, and the same are hereby repealed."

94-7825 to 94-7830. (12081 to 12086) **Repealed.**

Repeal

These sections (Secs. 4 to 9, Ch. 21, L. 1913), relating to probation, were repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7831. Investigation. No defendant convicted of a crime, the punishment for which may include imprisonment in the state prison, shall be sentenced or his case otherwise disposed of, until a written report of investigation by a probation and parole officer shall have been presented to, and considered by, the court, unless the court deems such report unnecessary. The court may, in its discretion, order a pre-sentence investigation for a defendant convicted of any lesser crime or offense. Whenever an investigation is required, the probation and parole officers shall promptly inquire into the circumstances of the offense, the attitude of the complainant, the social history, criminal record, and the present conditions of the defendant and his immediate family. All local and state police agencies shall furnish to the probation and parole officer such criminal records as the probation and parole officer may request. Where, in the opinion of the court or the investigating authority, it is found desirable, such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to an institution, the investigating agency shall send a report of such investigation to the institution at the time of commitment.

History: En. Sec. 5, Ch. 194, L. 1955.

Title of Act

An act to amend sections 94-7821, 94-7822, and 94-7824 of the Revised Codes of Montana, 1947, by substituting the words "Board of Pardons" for "Board of Prison Commissioners" and referring to the provisions of the Probation, Parole and Executive Clemency Act; providing for investigation by probation and parole officers prior to sentencing an individual convicted of a crime, if deemed necessary by the court; providing the sentences courts are authorized by law to impose; requiring courts to transmit to board of pardons certain statistical data; repealing sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing a saving clause; and providing an effective date clause.

94-7832. Sentence. Whenever any person has been found guilty of a crime or offense upon verdict or plea, the court may adjudge as follows:

(1) Release the defendant on probation, (2) Suspend the imposition or execution of sentence, (3) Impose a fine as provided by law for the offense, (4) Impose any combination of (1), (2), (3), or, (5) Commit the defendant to a correctional institution with or without a fine as provided by law for the offense.

History: En. Sec. 6, Ch. 194, L. 1955.

94-7833. Information from courts. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. Sec. 7, Ch. 194, L. 1955.

94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parol under existing laws with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon, as the case may be, provided that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 9, Ch. 194, L. 1955.

Separability Clause

Section 8 of Ch. 194, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

CHAPTER 80—THE EXECUTION

94-8009. (12095) Insanity of defendant, how determined.

References

Cited in Solesbee v. Balkom, 339 U S 29, 94 L Ed 615, 70 S Ct 466 (dissenting opinion).

CHAPTER 81—APPEALS TO SUPREME COURT—WHEN ALLOWED —HOW TAKEN—EFFECT THEREOF

94-8101. (12105) Defendant may appeal from any judgment.

Appeals from Justice Courts

The Supreme Court does not have appellate jurisdiction to review the judgments or orders of the justice courts of

this state. State ex rel. Estes v. Justice Court of Jefferson County, — M —, 284 P 2d 249, 250.

References

Cited or applied in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

94-8103. (12107) Appeal, when may be taken by the defendant.

References

Cited in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Zumwalt, — M —, 291 P 2d 257, 259.

94-8104. (12108) In what cases by the state.

Right to Appeal Limited by This Section

Where defendant was convicted in justice of peace court and appealed to district court in which court the action was dismissed on defendant's motion, state had no right of appeal under this section. State v. McCluskey, 125 M 20, 229 P 2d 169.

A district court's order of dismissal of the complaint following an appeal from a conviction in a justice of the peace court does not fail within the provisions of this section and therefore is not an appealable order. State v. Becko, 125 M 76, 230 P 2d 768, 769.

References

Cited or applied in State v. Perez, 126 M 15, 243 P 2d 309, 310; State v. Widdicombe, — M —, 301 P 2d 1116, 1117.

94-8105. (12109) Appeals, time limitation.

Operation and Effect

Where person convicted in district court petitioned Supreme Court for writ of mandate to compel district to furnish "copy of trial and court record transcript" for purpose of appeal in forma pauperis, writ was denied where no timely application had been filed in accordance with section 94-8106. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Cited or applied in State v. Zumwalt, — M —, 291 P 2d 257, 259; State v. Kuntz, — M —, 295 P 2d 707, 708.

94-8106. (12110) Appeal, how taken.

Oral Request for Appeal Ineffective

Oral request of intention to appeal made orally in open court fails to conform to this section and is wholly ineffectual to give the Supreme Court jurisdiction. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

CHAPTER 82—DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT ON APPEAL—JUDGMENT ON APPEAL

94-8207. (12125) Judgment without regard to technical errors.

Erroneous Instruction

Erroneous instructions are not cause for reversal in the absence of any prejudice. State v. Hay, 120 M 573, 194 P 2d 232, 236.

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Transcript of Evidence—Necessity.

In order to give effect to this section to determine whether the erroneous instructions were merely technical errors, or affected the substantial rights of the accused, it is necessary that the supreme court have before it a transcript of the evidence. State v. Hay, 120 M 573, 194 P 2d 232, 237.

94-8210. (12127) May reverse, affirm or modify the judgment and order, etc.

Operation and Effect

Where Supreme Court reversed conviction of defendant and remanded cause to district court with directions that if defendant have a new trial the district court should first make inquiry into the defendant's insanity but if the prosecution is dismissed that the district court deliver

the defendant to the court of another county which has continuing jurisdiction over the defendant so that the latter court may inquire into his mental condition and make such disposition of the defendant as is required by law; and thereafter the prosecution was dismissed, the trial court then was compelled to deliver the defendant to the other district court and county attorney could not file a new information. The trial court was bound to follow the mandate of the Supreme Court as found in the remittitur and mandamus will lie to require that the district court follow such mandate. State ex rel. Kitchens v. District Court, — M —, 294 P 2d 907. (Dissenting opinion, — M —, 294 P 2d 907, 911.)

94-8215. (12132) **Jurisdiction ceases after judgment remitted.**

Operation and Effect

Where Supreme Court reversed conviction and the remittitur went down in due course and was filed with the lower court, the Supreme Court at that time lost jurisdiction in the case. Specifically it lost any jurisdiction it may have had theretofore to alter in any particular either the opinion or the mandate which followed upon that opinion, certainly unless the remittitur were first recalled. State ex rel. Kitchens v. District Court, — M —, 294 P 2d 907, 908.

CHAPTER 83—IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL

94-8301. (12133) **Admission to bail defined.**

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. 23 ALR 2d 803.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 ALR 2d 945.

CHAPTER 85—BAIL ON INDICTMENT OR INFORMATION BEFORE CONVICTION

Section 94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate.
94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash.
94-8510. Certification of names of sureties—withdrawal by surety company.

94-8501. (12145) **When the offense is not capital.**

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 443.

94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate. (A) Any domestic or foreign surety company which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed one hundred dollars ($100.00) with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state, by filing with the commissioner of insurance an undertaking thus to become surety.

(B) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(1) The name and address of the automobile club or clubs, automobile association, or insurance company or companies, or associations with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed one hundred dollars ($100.00) of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(C) The term, guaranteed arrest bond certificate, means any printed card or other certificate issued by an automobile club, association or insurance company, to any of its members or insureds, which said card or certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana, guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed one hundred dollars ($100.00).

History: En. Sec. 1, Ch. 39, L. 1957.

Title of Act

An act authorizing qualified surety companies to become surety with respect to guaranteed arrest bond certificates of automobile clubs and associations and insurance companies authorized to write automobile liability insurance within the state of Montana, and requiring the acceptance of such certificates in lieu of cash or property bail in the event of certain violations of motor vehicle laws; providing that all acts and parts of acts in conflict herewith are repealed.

94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash. Any guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state, as provided in section 1 [94-8508] hereof, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed one hundred dollars ($100.00), as a bail bond to guarantee the appearance of such person, in any court, including municipal courts, in this state, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as provided by law, and that any such guaranteed arrest bond certificate posted as bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. Sec. 2, Ch. 39, L. 1957.

94-8510. Certification of names of sureties—withdrawal by surety company. The commissioner of insurance shall certify to each justice of the

peace, police magistrate and district judge the names of surety companies who have become sureties with respect to guaranteed arrest bond certificates, and shall likewise immediately notify such official upon the withdrawal of such company as surety. No such withdrawal by any company shall be effective for thirty (30) days after the filing thereof with the state insurance commissioner.

History: En. Sec. 3, Ch. 39, L. 1957.

Repealing Clause

Section 4 of Ch. 39, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 88—WHO MAY BE WITNESSES IN CRIMINAL ACTIONS

94-8802. (12176) Competency of husband and wife as witnesses.

Operation and Effect

It was error to permit wife to testify against husband in trial for assault by unlawfully threatening another by pointing a loaded revolver in violation of subd. 4 of section 94-602 where no offense against the wife was charged. State v. Storm, 124 M 102, 220 P 2d 674, 675.

94-8803. (12177) When the defendant is not a competent witness, etc.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767.

CHAPTER 90—WITNESSES FROM WITHOUT STATE—HOW SECURED IN CRIMINAL PROCEEDINGS

Section 94-9003. Witness from another state summoned to testify in this state.

94-9003. Witness from another state summoned to testify in this state.

(1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation, which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate will be presented to a judge of a court of record in the county in which the witness is found.

(2) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that such witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which such determination said certificate shall be prima facie proof, may order that said witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to such officer to take such witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

(3) If the witness is summoned to attend and testify in this state, he shall be tendered the sum of ten cents (10¢) a mile for each mile and five dollars ($5.00) for each day that he is required to travel and attend as a

witness, provided further that in those cases in which the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount or amounts in excess of the amount hereinbefore in this paragraph provided, then said witness may be tendered said amount or amounts so required by said state to be tendered though the said amount or amounts so required to be tendered are in excess of the said amounts in this paragraph provided for. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949.

Amendment

The 1949 amendment added the proviso to the first sentence of paragraph (3).

Repealing Clause

Section 2 of Ch. 117, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 117, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

CHAPTER 93—PROCEEDINGS ON INQUIRY AS TO SANITY OF A DEFENDANT

94-9301. (12213) Insane person cannot be tried or punished.

Declaratory of Common Law

This statute is declaratory of the common law as it has existed at least since Blackstone's day. Comparable or similar statutes have been enacted in all but four states of the Union. In these four, it seems the common law without the aid of statute remains in force. State v. Kitchens, — M —, 286 P 2d 1079, 1083.

94-9302. (12214) Doubts as to sanity of defendant, how determined, etc.

Construction

A doubt within the meaning of this section may come from matters which are brought to the attention of the trial judge wholly beyond the common-law record or which although occurring at the trial do not appear in the record, or which although shown in the record are not admissible as evidence bearing upon any issue before the trial court on the merits. The sources of that doubt need not be evidence. It is enough that the doubt comprehended by the statute arises from credible and trustworthy information brought to the attention of the trial court from any source at all. State v. Kitchens, — M —, 286 P 2d 1079, 1083.

The question whether such a doubt is raised in any given case addresses itself directly to the sound judicial discretion of the trial court. But like any other matter thus committed to the discretion of a court or its judge this discretion may not be exercised arbitrarily. Its abuse will be reviewed on appeal, and where an abuse does appear the reviewing court will say as a matter of law a doubt did arise which commanded action, and which therefore works a reversal for the error of the judge below in failing to heed its command. State v. Kitchens, — M —, 286 P 2d 1079, 1083.

The weight of successive adjudications by four different courts and judges, in other proceedings, that the defendant was insane, were sufficient as a matter of law to raise the doubt required by this section. The testimony of a witness that the defendant was sane does not alter the case, for at this stage of the proceedings the court is only concerned with the preliminary question whether there is reason to doubt the defendant's sanity. State v. Kitchens, — M —, 286 P 2d 1079, 1085.

References

Cited or applied in State ex rel. Kitchens v. District Court, — M —, 294 P 2d 907, 908.

94-9303. (12215) Trial of the question of insanity—charge of court.

Presumption of continuing insanity as applied to accused in criminal case. 27 ALR 2d 121.

CHAPTER 95—DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS

94-9501. (12223) When action may be dismissed.

Dismissal on Other Grounds

Where district court dismissed information on grounds other than that provided by this section and record failed to show whether this ground was urged at the hearing in the district court or any ruling thereon, the case was reversed and the cause remanded to the district court for further proceedings not inconsistent with the opinion of the Supreme Court. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027.

Interruption of Period

From the six months mentioned in subdivision 2 of this section must be excluded the time elapsing between the date the demurrer to the information was erroneously sustained and the date of the remittitur of the Supreme Court reversing the decision. State v. Israel, 124 M 152, 220 P 2d 1003, 1013.

Operation and Effect

Whether or not motion to dismiss information under this section because of delay in trial should be granted or denied depends on whether or not "good cause" is shown for delay. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027.

In a prosecution for a misdemeanor, where the complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not one under this section which would be a bar to the prosecution under section 94-9507. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859, 860, 861.

References

Cited or applied in State v. Porter, — M —, 300 P 2d 952, 953.

94-9502. (12224) Case may be continued.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State v. Porter, — M —, 300 P 2d 952, 953.

94-9505. (12227) Dismissed on motion of court or application, etc.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 973; State v. Piveral, 127 M 427, 265 P 2d 969, 970.

94-9507. (12229) Dismissal a bar in misdemeanor, but not in felony.

Bar—How Raised

The defense of the bar arising under this section may properly be raised by a plea of not guilty, and all matters in proof thereof are admissible under the plea of not guilty by virtue of section 94-6805. State v. Porter, — M —, 300 P 2d 952, 954.

Operation and Effect

This section applies only to orders of dismissal as provided in section 94-9501. Therefore, in a justice of the peace proceeding where a complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not a bar to the prosecution for the misdemeanor. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859 to 861.

References

Cited or applied in State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248, 250.

CHAPTER 98—PROBATION, PAROLE AND CLEMENCY

Section 94-9821. Act, how cited.
94-9822. Board of pardons—organization.
94-9823. Definitions.
94-9824. Seal, orders, records, annual report.
94-9825. Director and employees—salaries to be paid monthly—approval and auditing.
94-9826. Expenses to be paid.
94-9827. Legal advisor of the board.
94-9828. Duties of the director.
94-9829. Duties of probation and parole officers.
94-9830. Conditions of probation or suspension of sentence.
94-9831. Arrest—subsequent disposition.
94-9832. Parole authority and procedure.
94-9833. Conditional release.
94-9834. Information from prison officials.
94-9835. Persons may be heard—counsel.
94-9836. Subpoenas.
94-9837. Rules.
94-9838. Return of parole violator.
94-9839. Service of term for additional crime.
94-9840. Discharge of prisoner, parolee or conditional releasee.
94-9841. Cases of executive clemency.
94-9842. Notice of hearing applications for executive clemency.
94-9843. Publication of order.
94-9844. Proof of publication.
94-9845. Record of meeting, what to contain.
94-9846. When publication not necessary.
94-9847. Decision to be made.
94-9848. Governor may respite.
94-9849. Governor to report to legislative assembly.
94-9850. Cases of juveniles excluded.
94-9851. Effective date—application to persons presently on parole or probation or eligible for.

94-9801 to 94-9820. (12247 to 12266) **Repealed.**

Repeal

These sections (Secs. 2630 to 2646, Pen. C. 1895; Secs. 3 to 6, 8 to 12, p. 192, L. 1891; and Secs. 1 to 3, Ch. 95, L. 1907), relating to pardons and paroles, were repealed by Sec. 31, Ch. 153, Laws 1955. For new provisions, see secs. 94-9821 to 94-9851.

94-9821. Act, how cited. This act shall be known and may be cited as the Probation, Parole and Executive Clemency Act.

History: En. Sec. 1, Ch. 153, L. 1955.

Title of Act

An act creating a board of pardons and prescribing the appointment and composition thereof, with power and duty to grant paroles, within restrictions, to supervise probations and suspended sentences, to recommend after duly noticed public hearing that the governor remit fines and forfeitures, grant pardons, absolute or conditional; grant commutations of punishments after conviction and judgment for offenses committed against the criminal laws of this state; providing for a director and a staff to administer the provisions of this act, and defining their duties; requiring records of board proceedings; providing for arrest of parolees or probationers upon violation of conditions of release; providing penalties for parole or probation violators; defining rights of attorneys to hearing before the board; providing the board with power to subpoena witnesses, and make rules and regulations under the provisions of this act; defining governor's power to respite; requiring governor to report acts of executive clemency to the legislative assembly; excluding juveniles; providing a saving clause; repealing sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; and providing an effective date clause.

94-9822. Board of pardons—organization. There is hereby created a state board of pardons, hereinafter referred to as the "board," consisting

of three (3) members who shall be appointed by the governor with the advice and consent of the senate. The board shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of such system and the laws upon which it is based. The members of the board shall serve on a per diem basis and shall be paid at the rate of fifteen dollars ($15.00) per day of service, plus actual and necessary expenses, and shall meet at least once each month at the state prison. The members of the board shall serve for terms of six (6) years, and until their successors are duly appointed and qualified, provided, however, that two (2) of these first appointed after this act takes effect, shall serve for terms of two (2) and four (4) years, respectively. The governor shall appoint the members of the board and call a meeting thereof within thirty (30) days of the effective date thereof. The board shall immediately thereafter set up the system herein provided for, and make the necessary appointments of its director, and other employees. Suitable quarters, supplies and equipment shall be provided. The principal office of the board shall be in Deer Lodge, Montana. A vacancy occurring before the expiration of any member's term of office shall be filled in the same manner for the unexpired portion of said term. The governor may at any time, after notice and hearing, remove any member for neglect of duty, malfeasance, misfeasance or nonfeasance in office.

History: En. Sec. 2, Ch. 153, L. 1955.

94-9823. Definitions. When used in this act, unless the context otherwise requires:

(a) "Probation" is the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(b) "Parole" is the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(c) "Executive clemency" refers to the powers of the governor as provided by section 9 of Article VII of the Constitution of the state of Montana.

History: En. Sec. 3, Ch. 153, L. 1955.

94-9824. Seal, orders, records, annual report. The board shall adopt an official seal of which the courts shall take judicial notice. A majority of the board shall constitute a quroum. Decision of the board may be by majority vote. The orders of the board shall not be reviewable except as to compliance of terms of this act. The board shall keep a record of its acts and decisions available to the public, providing, however, that all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by any member or employee of the board, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge; provided, however, that the board or a court may in its discretion, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection

of the report or any parts thereof by the prisoner or his attorney. At the close of each fiscal year the board shall submit to the governor, to the board of prison commissioners and to the legislature, a report with statistical data of its work, including research studies which it may make of probation, sentencing, parole or related functions, and a compilation and analysis of dispositions by criminal courts throughout the state.

History: En. Sec. 4, Ch. 153, L. 1955.

94-9825. Director and employees—salaries to be paid monthly—approval and auditing. The board shall appoint a state director of probation and parole, hereinafter referred to as the "director" who shall appoint, with the approval of the board, an assistant director, probation and parole officers and other employees required to administer the provisions of this act. The director shall receive an annual salary of seven thousand dollars ($7,000.00) per annum payable monthly. All other officers and employees of the board shall receive such compensation for their services as may be fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform such duties as are imposed on them by law or by the board.

The salaries of all officers and employees of the board shall be paid monthly after such salaries have been approved by the board upon claims therefore, to be audited and approved by the state board of examiners.

History: En. Sec. 5, Ch. 153, L. 1955; amd. Sec. 1, Ch. 122, L. 1957.

Amendment

The 1957 amendment raised the salary of the director from $6,000 to $7,000 per annum.

Repealing Clause

Section 2 of Ch. 122, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 122, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

94-9826. Expenses to be paid. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the board either within or without the state, shall, unless otherwise provided in this act, be paid from funds appropriated, after being approved by the board upon claims therefor, to be audited and approved by the state board of examiners.

History: En. Sec. 6, Ch. 153, L. 1955.

94-9827. Legal advisor of the board. The board may appoint any qualified attorney or the attorney general to act as its legal advisor and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955.

94-9828. Duties of the director. The director shall be the executive officer of the board. He shall be responsible for such investigation and supervision as may be requested by the board or the courts. He shall, subject to the approval of the board, divide the state into districts and assign probation and parole officers to serve in the various districts and courts; he shall obtain office quarters for such staff in each district as may be

necessary. He shall assign the secretarial, bookkeeping and accounting work to the clerical employees, including receipt and disbursement of money. He shall direct the work of the probation and parole officers and other employees assigned to him. He shall formulate methods of investigation, supervision, record keeping and reports. He shall conduct training courses for the staff. He shall seek to cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole. He shall further be charged with the administration of the provisions of the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955.

94-9829. Duties of probation and parole officers. Probation and parole officers shall investigate all persons referred to them for investigation by the director of probation and parole or by any court to which they are instructed by the director to serve. They shall furnish to each person released under their supervision a written statement of the conditions of probation or parole and shall instruct him regarding same. They shall keep informed of the conduct and condition of each person released under their supervision and use all suitable methods to aid and encourage him to bring about improvement in his conduct and condition. Probation and parole officers shall keep detailed records of their work. They shall supervise the collection and disbursement of all moneys when so instructed by the director in accordance with the orders of a court. They shall make such reports in writing as the director may require.

History: En. Sec. 9, Ch. 153, L. 1955.

94-9830. Conditions of probation or suspension of sentence. The board may adopt general rules or regulations concerning the conditions of probation or suspension of sentence. Such conditions shall apply in the absence of any specific or inconsistent conditions imposed by a court. Nothing herein contained shall limit the authority of the court to impose or modify any general or specific conditions of probation or of suspension of sentence.

The probation and parole officer may recommend, and by order duly entered, a court may modify any conditions of probation or suspension of sentence at any time. Due notice shall be given to the probation and parole officer before any such conditions are modified and he shall be given an opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation and parole officer and the probationer.

History: En. Sec. 10, Ch. 153, L. 1955.

94-9831. Arrest—subsequent disposition. At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation and parole officer may arrest such defendant without a warrant, or may

deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime, shall be applicable to the defendants arrested under these provisions.

Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner, and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary. If the violation is established, the court may continue to revoke the probation or suspension of sentence, and may require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court, shall, after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from, or to have fled from, justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served on probation or suspended sentence, shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955.

94-9832. Parole authority and procedure. The board shall release on parole any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided,

1. That no convict serving a time sentence shall be paroled until he shall have served at least one-quarter (¼) of his full term, less good time allowances off, as provided in section 80-740; except that any convict serving a time sentence may be paroled after he shall have served, upon his term of sentence, twelve and one-half (12½) years;

2. No convict, serving a life sentence, shall be paroled until he shall have served twenty-five (25) years, less the good time allowances off, as provided in section 80-740. All paroles shall issue upon order of the board, duly adopted.

Within two (2) months after his admission and at such intervals thereafter as it may determine, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and

attitude in prison, and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the board shall have the prisoner appear before it and shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

History: En. Sec. 12, Ch. 153, L. 1955.

References

Cited or applied in State ex rel. Ball v. Burrell, — M —, 292 P 2d 144.

94-9833. Conditional release. A prisoner having served one-fourth (¼) of his term or terms, less good time allowances, shall upon parole, be deemed as released on parole until the expiration of the maximum term or terms for which he was sentenced less good time allowances as provided in section 80-740.

History: En. Sec. 13, Ch. 153, L. 1955.

94-9834. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board, or its properly accredited representatives, access at all reasonable times to any prisoner over whom the board has jurisdiction under this act, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955.

94-9835. Persons may be heard—counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955.

94-9836. Subpoenas. The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof. Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law-enforcement officer. In case of contumacy by, or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them

may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail, or refuse to attend and testify, or to answer any lawful inquiry or to produce records, books, papers and other documents if it is in his power to do so, in obedience to a subpoena of the board or any member thereof, shall be punished by a fine of not more than two hundred dollars ($200) or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955.

94-9837. Rules. The board shall have the power and duty to make rules for the conduct of persons heretofore or hereafter placed on parole or on probation under the supervision of the board by any court in this state, and for the investigation and supervision of such persons, except that the board shall not make any rule applying to a person on probation which conflicts with the conditions of probation imposed by the court.

History: En. Sec. 17, Ch. 153, L. 1955.

94-9838. Return of parole violator. At any time during release on parole or conditional release the board may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner shall remain incarcerated in such institution.

Upon such arrest and detention, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may

adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board.

History: En. Sec. 18, Ch. 153, L. 1955.

94-9839. Service of term for additional crime. Any prisoner who commits a crime while at large upon parole or conditional release, and who is convicted and sentenced therefor, shall serve such sentence concurrently with the terms under which he was released, unless otherwise ordered by the court in sentencing for the new offense.

History: En. Sec. 19, Ch. 153, L. 1955.

94-9840. Discharge of prisoner, parolee or conditional releasee. The period served on parole or conditional release shall be deemed service of the term of imprisonment, and, subject to the provisions contained in section 18 [94-9838] herein relating to a prisoner who is a fugitive from, or has fled from, justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: En. Sec. 20, Ch. 153, L. 1955.

94-9841. Cases of executive clemency. The board shall investigate and report to the governor with respect to all cases of pardons, remissions of fines and forfeitures, and commutations of punishment after conviction and judgment for any offenses committed against the criminal laws of the state. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955.

94-9842. Notice of hearing applications for executive clemency. After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning ————————, a convict confined in the State Prison (or to one ————————, who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of ———————— committed at ————————, in the County of

————————, State of Montana, on the —— day of ————————, 19—, and sentenced for a term of —— years.

"Therefore, be it ordered that —— the —— day of ————————, 19—, be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon (or commutation, remission of the fine or forfeiture) are hereby notified to be present at —— o'clock of said day, at ————————.

"Further, ordered that a copy of this order be printed and published in the ———————— (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at ———————— in the county of ———— ————————, once each week for two weeks beginning, ————————, 19—, and ending ————————."

History: En. Sec. 22, Ch. 153, L. 1955.

94-9843. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated, at least once a week for two weeks prior to the hearing, and at the same time cause to be deposited in the postoffice at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney and sheriff, respectively, of the county where the crime was committed, and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955.

94-9844. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955.

94-9845. Record of meeting, what to contain. At the hearing the board must cause to be kept a record showing:

1. The name of all persons appearing before the board on behalf of the person pardoned by the governor;
2. The name of all persons appearing before the board in opposition to the granting of the same;
3. The testimony of all persons giving evidence before the board;
4. That the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955.

94-9846. When publication not necessary. No publication need be made as provided in sections 22, 23 and 24 [94-9842, 94-9843 and 94-9844], in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.
2. When the term of imprisonment of the applicant is within ten (10) days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955.

94-9847. Decision to be made. Within thirty (30) days after the hearing of any case, the board must make a decision in writing, and if

such decision be made to recommend executive clemency, the copy of the decision, together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955.

94-9848. Governor may respite. The governor has the power to grant respites after conviction and judgment, for any offenses committed against the criminal laws of the state, for such time as he thinks proper.

History: En. Sec. 28, Ch. 153, L. 1955.

94-9849. Governor to report to legislative assembly. The governor must communicate to the legislative assembly at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955.

94-9850. Cases of juveniles excluded. The provisions of this act shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955.

94-9851. Effective date—application to persons presently on parole or probation or eligible for. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws, with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon as the case may be, provided that no person convicted and sentenced before the effective date hereof shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 33, Ch. 153, L. 1955.

Repealing Clause

Section 31 of Ch. 153, Laws 1955 read "That sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

Separability Clause

Section 32 of Ch. 153, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

CHAPTER 99—BASTARDY PROCEEDINGS

94-9908. (12274) **Power of court over judgments and orders.**

Foreign filiation or support order in bastardy proceedings, requiring periodic payments, as extraterritorially enforceable. 16 ALR 2d 1098.

CHAPTER 100—JUSTICES' AND POLICE COURT PROCEEDINGS—APPEALS

Section 94-100-25. Proceedings on plea of guilty or on conviction.

94-100-1. (12302) Proceedings must be by complaint.

Sufficiency of Complaint

A complaint is sufficient where it stated facts constituting a public offense and charged a violation of the provisions of section 4-414, which is a misdemeanor (4-439) within the jurisdiction of the justice of the peace court under section 94-4916. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-100-4. (12305) Plea, how put in.

Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written "Special Plea in Bar" and ordering the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-6802. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861.

94-100-10. (12311) New complaint.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-100-25. (12326) Proceedings on plea of guilty or on conviction.

When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had.

History: En. Sec. 2704, Pen. C. 1895; re-en. Sec. 9608, Rev. C. 1907; re-en. Sec. 12326, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1955. Cal. Pen. C. Sec. 1445.

Amendment

The 1955 amendment substituted the word "or" for "and" between the words "fine" and "imprisonment."

94-100-33. (12334) Defendant may appeal.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861.

94-100-34. (12335) Notice of appeal.

Application of Section

This section permitting appeal by notice in open court does not apply to the taking of an appeal to the Supreme Court from a judgment of a district court. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

94-100-38. (12339) Trial anew.

Operation and Effect

Where an appeal is taken to the district court from a conviction in a police court for a liquor law violation, but neither the city nor the defendant requested the cause be set for trial, the judge of the court could not order the appeal dismissed "for want of prosecution" without giving notice to the defendant. Such an order is void and in excess of jurisdiction. State ex rel. Healy v. District Court, 125 M 77, 230 P 2d 763.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861.

CHAPTER 101—THE WRIT OF HABEAS CORPUS

94-101-1. (12348) Who may prosecute writ.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

94-101-2. (12349) **Application for, how made.**

References

Cited or applied in Application of Enke, — M —, 287 P 2d 19, 22.

94-101-21. (12368) **Person illegally restrained may be committed to, etc.**

References

Cited or applied in Application of Butts, — M —, 289 P 2d 949, 951.

CHAPTER 301—SEARCH WARRANTS

94-301-19. (12412) **Property, when to be restored.**

Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or search on premises where such activities took place. 19 ALR 2d 1228.

CHAPTER 501—UNIFORM CRIMINAL EXTRADITION ACT

94-501-1. Definitions.

References

Cited or applied in State ex rel. Middlemas v. District Court, 125 M 310, 233 P 2d 1038, 1039.

94-501-7. Issuance of warrant of arrest by governor—recitals therein.

References

Cited or applied in State v. MacLean, — M —, 291 P 2d 250, 252.

94-501-20. Guilt or innocence of accused, when inquired into.

Operation and Effect

It is sufficient in habeas corpus proceedings to justify holding the petitioner if it is shown in Montana that the governor received from the governor of Oregon a copy of the affidavit made by the prosecuting witness, charging the defendant with a felony and also of the warrant of arrest issued by the judge of a district court of the state of Oregon and duly authenticated. State ex rel. Middlemas v. District Court, 125 M 310, 233 P 2d 1038, 1040.

CHAPTER 901—RECIPROCAL ENFORCEMENT OF SUPPORT

Section

94-901-1. Purposes.
94-901-2. Definitions.
94-901-3. Remedies additional to those now existing.
94-901-4. Extent of duties of support.
94-901-5. Criminal enforcement—extradition.
94-901-6. Relief from the above provisions.
94-901-7. Civil enforcement—what duties are enforceable.
94-901-8. Remedies of a state or political subdivision thereof furnishing support.
94-901-9. How duties of support are enforced.
94-901-10. Contents of petition or complaint for support.
94-901-11. Duty of court of this state as initiating state.
94-901-12. Duty of the court of this state as responding state.
94-901-13. Order of support.
94-901-14. Responding state to transmit copies to initiating state.
94-901-15. Additional powers of court.
94-901-16. Additional duties of the court of this state when acting as responding state.
94-901-17. Additional duty of the court of this state when acting as an initiating state.
94-901-18. Evidence of husband and wife.

94-901-1. Purposes. The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

History: En. Sec. 1, Ch. 222, L. 1951.

Title of Act

An act to establish a uniform recriprocal enforcement of support; providing definitions; providing additional remedies; providing for criminal enforcement by extradition; providing for civil enforcement in district court; providing duties in district court to respond to judgments in support actions brought in the states with reciprocal laws.

Divorce⇦261, 311; Husband and Wife ⇦281, 299(4), 316; Parent and Child⇦ 3(3), 17.

27 C.J.S. Divorce §§ 253, 321; 42 C.J.S. Husband and Wife §§ 606, 625, 646; 67 C.J.S. Parent and Child §§ 20, 91.

94-901-2. Definitions. As used in this act unless the context requires otherwise,

(1) "State" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the district court of any judicial district of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "Law" includes both common and statute law.

(6) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed.

History: En. Sec. 2, Ch. 222, L. 1951.

94-901-3. Remedies additional to those now existing. The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 222, L. 1951.

94-901-4. Extent of duties of support. The duty of support imposed by the laws of this state or by the laws of the state where the obligee was present when the failure to support commenced as provided in section 7 [94-901-7] and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 222, L. 1951.

94-901-5. Criminal enforcement—extradition. The governor of this state (1) may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state and (2) may surrender on demand by the governor of any other state any

person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other state.

History: En. Sec. 5, Ch. 222, L. 1951.

Cross-Reference

Extradition, secs. 94-501-1 to 94-501-32.

Extradition⇐30.

35 C.J.S. Extradition § 10.

94-901-6. Relief from the above provisions. Any obligor contemplated by section 5 [94-901-5], who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this state during the period of such compliance.

History: En. Sec. 6, Ch. 222, L. 1951.

94-901-7. Civil enforcement—what duties are enforceable. Duties of support enforceable under this law are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.

History: En. Sec. 7, Ch. 222, L. 1951.

94-901-8. Remedies of a state or political subdivision thereof furnishing support. Whenever the state or a political subdivision thereof has furnished support to an obligee it shall have the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made.

History: En. Sec. 8, Ch. 222, L. 1951.

94-901-9. How duties of support are enforced. All duties of support are enforceable by petition or complaint irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the district court.

History: En. Sec. 9, Ch. 222, L. 1951.

94-901-10. Contents of petition or complaint for support. The petition or complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information.

History: En. Sec. 10, Ch. 222, L. 1951.

94-901-11. Duty of court of this state as initiating state. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, he shall so certify and shall cause certi-

fied copies of the petition, the certificate and an authenticated copy of this act to be transmitted to the court of the responding state.

History: En. Sec. 11, Ch. 222, L. 1951.

94-901-12. Duty of the court of this state as responding state. When the district court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall (1) docket the cause, (2) direct the clerk of the district court to inform the county attorney to proceed with the cause, (3) set a time and place for a hearing, and (4) take such action as is necessary in accordance with the laws of this state to obtain jurisdiction.

History: En. Sec. 12, Ch. 222, L. 1951.

94-901-13. Order of support. If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

History: En. Sec. 13, Ch. 222, L. 1951.

94-901-14. Responding state to transmit copies to initiating state. The court of this state when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or orders for reimbursement therefor.

History: En. Sec. 14, Ch. 222, L. 1951.

94-901-15. Additional powers of court. In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the clerk of the court or the obligee and to report personally to such clerk at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

History: En. Sec. 15, Ch. 222, L. 1951.

94-901-16. Additional duties of the court of this state when acting as responding state. The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

History: En. Sec. 16, Ch. 222, L. 1951.

94-901-17. Additional duty of the court of this state when acting as an initiating state. The court of this state when acting as an initiating state shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

History: En. Sec. 17, Ch. 222, L. 1951.

94-901-18. Evidence of husband and wife. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

History: En. Sec. 18, Ch. 222, L. 1951.

Separability of Provisions

Section 19 of Ch. 222, L. 1951 read, "If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Repealing Clause

Section 20 of Ch. 222, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 21 of Ch. 222, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 5, 1951.

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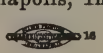
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	2	Rep. Ch. 134, Sec. 16 and Ch. 153, Sec. 13, L. 1949
114	1	Rep. Ch. 54, Sec. 1, L. 1957
142	1-3	Rep. Ch. 263, Sec. 158, L. 1955
146	1-2	Superseded by 84-4818 to 84-4826
193	10	Rep. Ch. 150, Sec. 2, L. 1955
	13	Rep. Ch. 115, Sec. 2 and Ch. 150, Sec. 2, L. 1955
	22	Rep. Ch. 79, Sec. 2, L. 1955
	30	Rep. Ch. 159, Sec. 2, L. 1955
216	56	Rep. Ch. 177, Sec. 13, L. 1951
238	3	Rep. Ch. 267, Sec. 5, L. 1955
	5	Rep. Ch. 267, Sec. 5, L. 1955
	13	Rep. Ch. 267, Sec. 5, L. 1955
	14	Rep. Ch. 159, Sec. 2, L. 1955
	16-17	Rep. Ch. 158, Sec. 3, L. 1955
	22	Rep. Ch. 185, Sec. 1, L. 1955
239	1-8	Rep. Ch. 198, Sec. 7, L. 1955 and Ch. 191, Sec. 8, L. 1957
253	1	Rep. Ch. 199, Sec. 24, L. 1949

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Ch.	Sec.	Herein
8	8	Rep. Ch. 238, Sec. 24, L. 1953
10	11-12	Rep. Ch. 263, Sec. 158, L. 1955

1923

Ch.	Sec.	Herein
57	1	Rep. Ch. 134, Sec. 16, L. 1949
58	1-8	Unconstitutional
65	15	Rep. Ch. 100, Sec. 1, L. 1955
77	4	Rep. Ch. 267, Sec. 5, L. 1955
	5	Rep. Ch. 159, Sec. 2, L. 1955
	8-9	Rep. Ch. 158, Sec. 3, L. 1955
131	3	Rep. Ch. 142, Sec. 11, L. 1949 and Ch. 90, Sec. 1, L. 1951
	8 (part)	Rep. Ch. 142, Sec. 11, L. 1949 and Ch. 89, Sec. 1, L. 1951

1925

Ch.	Sec.	Herein
56	1-4	Rep. Ch. 238, Sec. 24, L. 1953
80	1	Rep. Ch. 54, Sec. 1, L. 1957
97	1	Rep. Ch. 108, Sec. 2, L. 1949
108	1-6	Rep. Ch. 66, Sec. 7, L. 1955
130	1	Rep. Ch. 75, Sec. 3, L. 1953
150	5	Rep. Ch. 100, Sec. 1, L. 1955
161	1	Rep. Ch. 267, Sec. 5, L. 1955
185	1-3	Superseded by 84-4818 to 84-4826
192	6	Rep. Ch. 150, Sec. 2, L. 1955
	7	Rep. Ch. 115, Sec. 2 and Ch. 150, Sec. 2, L. 1955
	14	Rep. Ch. 267, Sec. 5, L. 1955
	15	Rep. Ch. 159, Sec. 2, L. 1955
	17	Rep. Ch. 158, Sec. 3, L. 1955
	19	Rep. Ch. 158, Sec. 3, L. 1955
	29	Rep. Ch. 146, Sec. 2, L. 1955

1927

Ch.	Sec.	Herein
13	1-2	Rep. Ch. 134, Sec. 16, L. 1949
28	1	Superseded by 50-450
55	1	Rep. Ch. 74, Sec. 1, L. 1957
59	8-9	Rep. Ch. 267, Sec. 5, L. 1955
	12	Rep. Ch. 159, Sec. 2, L. 1955
	13a	Rep. Ch. 158, Sec. 3, L. 1955
	29	Rep. Ch. 159, Sec. 2, L. 1955
60	25	Superseded by 81-432 to 81-435
96	1	Rep. Ch. 93, Sec. 1, L. 1953
109	18	Rep. Ch. 158, Sec. 1, L. 1953
119	1-4	Rep. Ch. 199, Sec. 23, L. 1949
122	1	Rep. Ch. 143, Sec. 3, L. 1949
126	3-5	Rep. Ch. 266, Sec. 8, L. 1955
141	5	Rep. Ch. 100, Sec. 1, L. 1955

1929

Ch.	Sec.	Herein
23	1-2	Rep. Ch. 185, Sec. 1, L. 1955
32	1	Rep. Ch. 102, Sec. 1, L. 1949
	2-3	Rep. Ch. 158, Sec. 3, L. 1955
50	1	Rep. Ch. 134, Sec. 16 and Ch. 153, Sec. 13, L. 1949
73	1	Rep. Ch. 119, Sec. 5, L. 1955
74	1	Rep. Ch. 263, Sec. 158, L. 1955
93	32	Rep. Ch. 99, Sec. 9, L. 1953
	40-41	Unconstitutional
111	2	Rep. Ch. 178, Sec. 6, L. 1953
128	1	Rep. Ch. 158, Sec. 3, L. 1955
166	1	Rep. Ch. 263, Sec. 158, L. 1955
	3-4	Rep. Ch. 263, Sec. 158, L. 1955
145	1	Rep. Ch. 199, Sec. 24, L. 1949

1931

Ch.	Sec.	Herein
87	1	Unconstitutional
91	1	Rep. Ch. 74, Sec. 1, L. 1957

Ch.	Sec.	Herein
115	1-2	Rep. Ch. 158, Sec. 3, L. 1955
	3	Rep. Ch. 159, Sec. 2, L. 1955
120	1-3	Rep. Ch. 99, Sec. 9, L. 1953
134	1-4	Rep. Ch. 263, Sec. 158, L. 1955
146	7	Rep. Ch. 199, Sec. 24, L. 1949
147	2-3	Rep. Ch. 142, Sec. 11, L. 1949
	5	Rep. Ch. 142, Sec. 11, L. 1949
	7-8	Rep. Ch. 142, Sec. 11, L. 1949
	10-11	Rep. Ch. 142, Sec. 11, L. 1949
148	2	Rep. Ch. 250, Sec. 3, L. 1957
	14	Rep. Ch. 83, Sec. 1, L. 1951
	18	Rep. Ch. 189, Sec. 9, L. 1951
	44	Rep. Ch. 189, Sec. 9, L. 1951
	80	Rep. Ch. 106, Sec. 1, L. 1951
	82	Rep. Ch. 146, Sec. 3, L. 1949
152	1	Rep. Ch. 102, Sec. 1, L. 1949 and Ch. 158, Sec. 3, L. 1955
	2	Rep. Ch. 158, Sec. 3, L. 1955
161	1-2	Rep. Ch. 267, Sec. 5, L. 1955
162	2	Rep. Ch. 159, Sec. 2, L. 1955

1933

Ch.	Sec.	Herein
18	1-7	Rep. Ch. 189, Sec. 9, L. 1951
19	1-2	Rep. Ch. 74, Sec. 1, L. 1957
23	2	Rep. Ch. 159, Sec. 2, L. 1955
33	1	Rep. Ch. 263, Sec. 158, L. 1955
40	1	Rep. Ch. 66, Sec. 7, L. 1955
42	3	Superseded by 81-432 to 81-435
44	106	Rep. Ch. 55, Sec. 2, L. 1955
50	1-2	Rep. Ch. 74, Sec. 1, L. 1957
70	1	Rep. Ch. 263, Sec. 158, L. 1955
	3	Rep. Ch. 263, Sec. 158, L. 1955
72	1-2	Rep. Ch. 20, Sec. 8, L. 1953
	3	Rep. Ch. 185, Sec. 1, L. 1955
75	1	Rep. Ch. 54, Sec. 1, L. 1957
81	1-3	Rep. Ch. 263, Sec. 158, L. 1955
87	2	Rep. Ch. 159, Sec. 2, L. 1955
91	1	Rep. Ch. 171, Sec. 1, L. 1951
	2	Rep. Ch. 31, Sec. 2, L. 1949
105	50	Rep. Ch. 53, Sec. 1, L. 1949
106	12	Rep. Ch. 166, Sec. 12, L. 1951
	32-35	Rep. Ch. 166, Sec. 12, L. 1951
	47	Rep. Ch. 166, Sec. 12, L. 1951
123	1	Rep. Ch. 158, Sec. 3, L. 1955
128	1	Rep. Ch. 267, Sec. 5, L. 1955
134	1	Superseded by 84-4818 to 84-4826
156	1	Rep. Ch. 189, Sec. 9, L. 1951
172	1-9	Rep. Ch. 162, Sec. 19, L. 1953
178	8	Rep. Ch. 106, Sec. 1, L. 1951
	11	Rep. Ch. 199, Sec. 24, L. 1949
	19	Rep. Ch. 199, Sec. 24, L. 1949
	30	Rep. Ch. 199, Sec. 24, L. 1949
179	1	Rep. Ch. 199, Sec. 24, L. 1949
181	16	Rep. Ch. 260, Sec. 15, L. 1955
	18	Rep. Ch. 260, Sec. 15, L. 1955
	23	Rep. Ch. 212, Sec. 2, L. 1957
	25	Rep. Ch. 227, Sec. 4, L. 1957

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Ch.	Sec.	Herein
9	1	Rep. Ch. 162, Sec. 19, L. 1953
18	1-18	Rep. Ch. 238, Sec. 24, L. 1953
	20	Rep. Ch. 238, Sec. 24, L. 1953
19	1	Rep. Ch. 74, Sec. 1, L. 1957
32	1	Rep. Ch. 66, Sec. 7, L. 1955
46	12	Rep. Ch. 166, Sec. 12, L. 1951

1935

Ch.	Sec.	Herein
1	1	Rep. Ch. 3, Sec. 1, L. 1953
	2-3	Rep. Ch. 158, Sec. 3, L. 1955
26	1-7	Superseded by 84-4818 to 84-4826
41	1-3	Rep. Ch. 267, Sec. 5, L. 1955
53	1	Rep. Ch. 194, Sec. 4, L. 1955
57	1	Rep. Ch. 194, Sec. 15, L. 1951
82	2	Rep. Ch. 159, Sec. 2, L. 1955
92	1	Rep. Ch. 189, Sec. 11 L. 1953
98	1-15	Rep. Ch. 213, Sec. 1, L. 1953
136	1	Rep. Ch. 238, Sec. 24, L. 1953
148	1	Rep. Ch. 260, Sec. 15, L. 1955
151	1	Rep. Ch. 106, Sec. 1, L. 1951
175	1-9	Rep. Ch. 199, Sec. 23, L. 1949

1937

Ch.	Sec.	Herein
38	1	Rep. Ch. 199, Sec. 23, L. 1949
82	1 (part 6)	Rep. Ch. 264, Sec. 28, L. 1955
	7 (part 5)	Rep. Ch. 199, Sec. 31, L. 1951
84	24-25	Rep. Ch. 67, Sec. 2, L. 1955
91	1-6	Rep. Ch. 33, Sec. 1, L. 1957
	8	Rep. Ch. 33, Sec. 1, L. 1957
95	1-6	40-1318 note
123	1-2	Rep. Ch. 238, Sec. 24, L. 1953
129	1-16	Rep. Ch. 204, Sec. 36, L. 1951
146	3	Superseded by 50-450
201	1-6	Rep. Ch. 85, Sec. 1, L. 1953
	8-9	Rep. Ch. 85, Sec. 1, L. 1953
202	1	Rep. Ch. 135, Sec. 16, L. 1955

1939

Ch.	Sec.	Herein
16	1	Rep. Ch. 189, Sec. 9, L. 1951
38	4	Rep. Ch. 205, Sec. 3, L. 1955
	5	Rep. Ch. 134, Sec. 16 and Ch. 153, Sec. 13, L. 1949
48	2-3	Rep. Ch. 178, Sec. 6, L. 1953
75	1	Rep. Ch. 83, Sec. 1, L. 1951
78	1	Rep. Ch. 113, Sec. 2, L. 1953
143	1	Rep. Ch. 217, Sec. 4, L. 1947
156	2	Rep. Ch. 134, Sec. 16 and Ch. 153, Sec. 13, L. 1949
161	1-6	Rep. Ch. 168, Sec. 7, L. 1955
163	8	Rep. Ch. 122, Sec. 3, L. 1955
169	1	Rep. Ch. 199, Sec. 23, L. 1949
174	1	Rep. Ch. 267, Sec. 5, L. 1955
217	5	Rep. Ch. 106, Sec. 1, L. 1951

1941

Ch.	Sec.	Herein
2	2	Rep. Ch. 211, Sec. 8, L. 1953
14	4	84-1903
18	1	Rep. Ch. 135, Sec. 16, L. 1955
82	4-5	Rep. Ch. 94, Sec. 1, L. 1953
92	1	Rep. Ch. 66, Sec. 7, L. 1955
93	7	Rep. Ch. 211, Sec. 8, L. 1953
123	1-3	Rep. Ch. 168, Sec. 7, L. 1955
124	1	Rep. Ch. 143, Sec. 3, L. 1949
126	1-4	Rep. Ch. 264, Sec. 28, L. 1955
131	1	Rep. Ch. 199, Sec. 24, L. 1949
132	1	Rep. Ch. 199, Sec. 23, L. 1949
161	1	Rep. Ch. 158, Sec. 3, L. 1955

1943

Ch.	Sec.	Herein
24	1-2	Rep. Ch. 34, Sec. 1, L. 1953
	4-5	Rep. Ch. 34, Sec. 1, L. 1953
45	1	Rep. Ch. 34, Sec. 1, L. 1953
96	1	Rep. Ch. 3, Sec. 1, L. 1953
100	1-2	Unconstitutional
108	1	Rep. Ch. 199, Sec. 23, L. 1949
112	2	Rep. Ch. 134, Sec. 16 and Ch. 153, Sec. 13, L. 1949

Ch.	Sec.	Herein
131	1-3	Rep. Ch. 74, Sec. 1, L. 1957
139	1	Rep. Ch. 66, Sec. 7, L. 1955
152	1	Rep. Ch. 20, Sec. 8, L. 1953
172	1	Rep. Ch. 134, Sec. 16 and Ch. 153, Sec. 13, L. 1949
	2	Rep. Ch. 134, Sec. 16, L. 1949
176	1-3	Rep. Ch. 79, Sec. 1, L. 1953
186	1	Rep. Ch. 90, Sec. 1, L. 1951
	2-6	Rep. Ch. 142, Sec. 11, L. 1949
	8-10	Rep. Ch. 142, Sec. 11, L. 1949
198	1-2	Rep. Ch. 263, Sec. 158, L. 1955
199	7-9	Rep. Ch. 263, Sec. 158, L. 1955
204	1-2	Rep. Ch. 168, Sec. 7, L. 1955
216	1	Rep. Ch. 150, Sec. 2, L. 1955
219	2	Rep. Ch. 106, Sec. 1, L. 1951

1945

Ch.	Sec.	Herein
22	1	Rep. Ch. 264, Sec. 28, L. 1955
38	5	Superseded by 50-450
	16	Superseded by 50-450 and 50-467
39	10	Rep. Ch. 230, Sec. 2, L. 1957
51	1	Rep. Ch. 199, Sec. 24, L. 1949
64	1	Rep. Ch. 182, Sec. 4, L. 1949
85	1	Rep. Ch. 91, Sec. 1, L. 1953 and Ch. 168, Sec. 7, L. 1955
	2	Rep. Ch. 91, Sec. 1, L. 1953
108	1	Rep. Ch. 172, Sec. 1, L. 1951
129	1	Rep. Ch. 199, Sec. 23, L. 1949
142	1-10	Rep. Ch. 197, Sec. 5, L. 1949
145	1	Rep. Ch. 20, Sec. 8, L. 1953
146	1	Rep. Ch. 20, Sec. 8, L. 1953
150	2-3	Rep. Ch. 22, Sec. 2, L. 1957
162	1-4	Rep. Ch. 162, Sec. 14, L. 1955
170	2	Rep. Ch. 264, Sec. 28, L. 1955
198	2	Rep. Ch. 133, Sec. 3, L. 1955
207	6	Superseded by 81-432 to 81-435
208	1	Rep. Ch. 267, Sec. 5, L. 1955

1947

Ch.	Sec.	Herein
57	1	Rep. Ch. 20, Sec. 8, L. 1953
85	1	Rep. Ch. 79, Sec. 2, L. 1955
89	1-5	Rep. Ch. 104, Sec. 5, L. 1949
95	2	Rep. Ch. 135, Sec. 16, L. 1955
96	1	Rep. Ch. 263, Sec. 158, L. 1955
105	1	Rep. Ch. 3, Sec. 1, L. 1953
119	1	Rep. Ch. 150, Sec. 2, L. 1955
121	1	Rep. Ch. 185, Sec. 1, L. 1955
136	1	Rep. Ch. 20, Sec. 8, L. 1953
141	6	Rep. Ch. 46, Sec. 6, L. 1957
177	1	Rep. Ch. 182, Sec. 4, L. 1949
213	1	Rep. Ch. 204, Sec. 36, L. 1951
215	1	Rep. Ch. 267, Sec. 5, L. 1955
217	1	84-3804
	2-3	Temporary
	4	Repealing Clause and Effective Date
224	2	Rep. Ch. 159, Sec. 2, L. 1955
	6	Rep. Ch. 158, Sec. 3, L. 1955
	10	Rep. Ch. 185, Sec. 1, L. 1955
	13	Rep. Ch. 159, Sec. 2, L. 1955
	14	Rep. Ch. 158, Sec. 3, L. 1955
	22	Rep. Ch. 146, Sec. 2, L. 1955
	29-31	Rep. Ch. 54, Sec. 1, L. 1957
	32	Rep. Ch. 185, Sec. 1, L. 1955
250	1-13	Rep. Ch. 127, Sec. 2, L. 1949
253	1-10	Rep. Ch. 243, Sec. 27, L. 1953
254	2-3	Superseded by 81-432 to 81-435
267	23	Rep. Ch. 135, Sec. 2, L. 1951
270	5	Rep. Ch. 78, Sec. 2, L. 1953

Ch.	Sec.	Herein
272	1	Rep. Ch. 199, Sec. 24, L. 1949
277	1-4	Rep. Ch. 62, Sec. 2, L. 1949
281	1	Rep. Ch. 199, Sec. 23, L. 1949
284	1-23	Rep. Ch. 150, Sec. 27, L. 1957
285	1	Rep. Ch. 197, Sec. 5, L. 1949
292	1-11	Rep. Ch. 185, Sec. 14, L. 1957

1949

Ch.	Sec.	Herein
1	1-3	Temporary
2	1-5	Superseded by 79-2001 to 79-2003
3	1	Rep. Ch. 54, Sec. 1, L. 1957
	2	Effective Date
4	1	16-912
	2	Repealing Clause
	3	Effective Date
5	1-2	16-1008A
	3	Repealing Clause
	4	Effective Date
6	1-5	Const. Amend. Adopted, Art. XVIII, § 1
7	1	92-701
	2	92-702
	3	92-703
	4	92-704
	5	92-707
	6	92-709
	7	Repealing Clause
	8	Effective Date
8	1	82-601
	2	Repealing Clause
	3	Effective Date
9	1-3	Appropriation
10	1	11-3248
	2	Repealing Clause
11	1	16-2911
	2	Repealing Clause
	3	Effective Date
12	1	54-101
	2	Repealing Clause
13	1	46-2305
	2	Repealing Clause
	3	Effective Date
14	1	44-206
	2	Repealing Clause
15	1-3	Unconstitutional
16	1	1-603
	2	Repealing Clause
	3	Effective Date
17	1	Rep. Ch. 66, Sec. , L. 1955
	2	Repealing Clause
	3	Effective Date
18	1	83-502
	2	Repealing Clause
	3	Effective Date
19	1	21-106
	2	Repealing Clause
20	1	25-505 and 77-120
	2	Repealing Clause
	3	Effective Date
21	1	77-117
	2	Repealing Clause
	3	Effective Date
22	1-6	Rep. Ch. 196, Sec. 5, L. 1951
23	1	77-151
	2	Repealing Clause
	3	Effective Date
24	1	46-2104
	2	Repealing Clause
	3	Effective Date
25	1-4	Temporary
26	1	77-501
	2	Separability Clause
	2[2a]	Repealing Clause
	3	Effective Date
27	1	94-35-258
	2	94-35-259
	3	Repealing Clause
28	1	75-2701
	2	75-2704
	3	75-2705
	4	75-2707
	5	75-2709
	6	75-2712
	7	Repealing Clause
	8	Separability Clause
29	1-6	Rep. Ch. 220, Sec. 5, L. 1953
30	1	75-402.1
	2	Repealing Clause
31	1	26-1101
	2-3	Repealing Clause
32	1-2	Rep. Ch. 267, Sec. 5, L. 1955
33	1	82-1502
	2	82-1506
	3	82-1510
	4	82-1516
	5	82-1517
	6	Repealing Clause
	7	Effective Date
34	1	84-4914
	2	Repealing Clause
	3	Effective Date
35	1	9-501
	2	9-502
	3	9-503
	4	9-504
	5	9-505
	6	9-506
	7	9-507
	8	9-508
	9	9-509
	10	9-510

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Ch.	Sec.	Herein
35	11	9-511
	12	9-512
	13	9-513
	14	9-514
	15	9-515
	16	9-516
	17	9-517
	18	9-518
	19	9-519
	20	9-1001
	21	9-1002
	22	9-1003
	23	9-601
	24	9-602
	25	9-603
	26	9-604
	27	9-605
	28	9-606
	29	9-607
	30	9-1004
	31	9-1005
	32	9-1006
	33	9-608
	34	9-609
	35	9-610
	36	9-701
	37	9-702
	38	9-703
	39	9-704
	40	9-705
	41	9-706
	42	9-707
	43	9-708
	44	9-709
	45	9-710
	46	9-711
	47	9-712
	48	9-713
	49	9-714
	50	9-1009
	51	9-611
	52	9-612
	53	9-715
	54	9-807
	55	9-716
	56	9-801
	57	9-802
	58	9-803
	59	9-804
	60	9-805
	61	9-806
	62	9-808
	63	9-809
	64	9-810
	65	9-811
	66	9-812
	67	9-813
	68	9-814
	69	9-815
	70	9-816
	71	9-817
	72	9-818
	73	9-819
	74	9-820
35	75	9-821
	76	9-822
	77	9-823
	78	9-824
	79	9-825
	80	9-826
	81	9-827
	82	9-828
	83	9-829
	84	9-830
	85	9-831
	86	9-832
	87	9-833
	88	9-834
	89	9-901
	90	9-902
	91	9-903
	92	9-904
	93	9-905
	94	9-906
	95	9-907
	96	9-908
	97	9-909
	98	9-910
	99	9-911
	100	9-912
	101	9-913
	102	9-914
	103	9-915
	104	9-916
	105	9-917
	106	9-918
	107	9-919
	108	9-920
	109	9-921
	110	9-922
	111	9-923
	112	9-924
	113	9-925
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	116	9-1007
	117	9-1008
	118	9-1010
	119	9-1011
	120	9-1012
	121	9-1013
	122	9-1014
	123	Separability Clause
36	1	52-319
	2	Repealing Clause
	3	Effective Date
37	1	26-201
	2	Repealing Clause
38	1	94-6513
	2	Repealing Clause
39	1	11-1923
	2	Repealing Clause
	3	Effective Date
40	1-3	Repealing Clause
41	1	92-706
	2	Repealing Clause
	3	Effective Date

1949

Ch.	Sec.	Herein
42	1	11-2402
	2	None
	3	Effective Date
	4	Repealing Clause
43	1	94-35-260
	2	Repealing Clause
	3	Effective Date
44	1	84-4215
	2	84-4216
	3	84-4217
	4	Repealing Clause
	5	Effective Date
45	1	24-102
	2	24-126
	3	Repealing Clause
	4	Effective Date
46	1	71-410
	2	Repealing Clause
47	1	71-314
	2	71-403
	3	71-605
	4	Repealing Clause
48	1	10-524
	2	10-525
	3	Repealing Clause
49	1-5	Temporary
50	1	71-504
	2	Repealing Clause
51	1-2	Unconstitutional
52	1	11-2403
	2	11-2407
	3	Repealing Clause
53	1-2	Repealing Clause
54	1	75-3702 to 75-3705 note
	2	Repealing Clause
	3	Effective Date
55	1	23-1814
	2	Repealing Clause
56	1	Repealing Clause
	2	Effective Date
57	1	69-101
	2	69-102
	3	69-103
	4	69-105.1
	5	69-105.2
	6	69-105.3
	7	Repealing Clause
	8	Separability Clause
	9	69-105.3 note
	10	Repealing Clause
	11	Effective Date
58	1	25-508
	2	Repealing Clause
59	1	16-2723
	2	25-226
	3	Repealing Clause
60	1	72-609
	2	72-610
	3	72-612
	4	Repealing Clause
61	1	75-2901
	2	Repealing Clause
62	1	93-1501
	2-3	Repealing Clause
63	1	84-4907
	2	Repealing Clause
	3	Effective Date
64	1-4	Temporary
65	1	11-2282
	2	Repealing Clause
	3	Effective Date
66	1	93-6206
	2	Repealing Clause
	3	Effective Date
67	1	7-102
68	1	7-101
	2	Repealing Clause
69	1	82-1909
	2	82-1917
	3	Repealing Clause
	4	Effective Date
70	1-2	Rep. Ch. 263, Sec. 158, L. 1955
71	1	91-811
	2	Repealing Clause
	3	Effective Date
72	1	11-1801
	2	Effective Date
73	1	11-1901
	2	Effective Date
74	1	84-3201
	2	Repealing Clause
75	1	23-914
	2	Repealing Clause
76	1	3-2601
	2	3-2602
	3	3-2603
	4	3-2604
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	6	Emergency Clause
	7	3-2606
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77	1	59-417
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78	1	11-1823
	2	Repealing Clause
79	1	23-1105 to 23-1107, 23-1109 to 23-1112
	2	Repealing Clause
	3	Effective Date
80	1	91-4430
	2	Repealing Clause
	3	Effective Date
81	1	71-604
	2	Repealing Clause
82	1	80-304
	2	80-308
	3	80-310
	4	Repealing Clause
83	1	28-402
	2	28-403
	3	Effective Date
84	1	93-4905
	2	Repealing Clause
	3	Effective Date

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85	1	3-807
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86	1	4-227
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	3	Repealing Clause
	4	Effective Date
87	1	46-2407
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	5	46-2411
	6	46-2412
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	8	Repealing Clause
	9	Effective Date
88	1-3	Temporary
89	1	75-4202
	2	75-4203
	3	75-4204
	4	Repealing Clause
	5	Effective Date
90	1	40-2501
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	3	40-2503
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	6	40-2506
	7	40-2507
	8	40-2508
	9	40-2509
	10	40-2510
	11	40-2511
	12	40-2512
	13	40-2513
	14	Repealing Clause
	15	Effective Date
91	1	11-1015
	2	11-1016
	3	11-1017
	4	Repealing Clause
92	1	23-304
93	1	59-801
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94	1-2	Rep. Ch. 263, Sec. 158, L. 1955
95	1	81-908
	2	Effective Date
96	1	79-702
	2	Repealing Clause
	3	Effective Date
97	1	40-1624 and 40-1625
	2	None
	3	Repealing Clause
98	1	40-1506
	2	Repealing Clause
99	1	26-317
	2	Repealing Clause
100	1	26-344
	2	Repealing Clause
101	1	26-335
	2	Repealing Clause
102	1	Repealing Clause
103	1	25-227
	2	Repealing Clause
	3	25-227 note
104	1-5	Rep. Ch. 264, Sec. 28, L. 1955
105	1	69-3018
	2	Repealing Clause
	3	Effective Date
106	1	46-804
	2	Repealing Clause
107	1	46-218
	2	Repealing Clause
	3	Effective Date
108	1	16-2414
	2	Repealing Clause
109	1	46-609
	2	Repealing Clause
	3	Effective Date
110	1	46-801
	2	Repealing Clause
111	1	15-303
	2	Repealing Clause
112	1	91-3001
	2	91-3002
	3	91-3003
	4	Repealing Clause
113	1	93-1501-7
	2	Repealing Clause
114	1	16-1015
	2	Repealing Clause
115	1	84-444
	2	Repealing Clause
116	1	82-1103
	2	Effective Date
117	1	94-9003
	2	Repealing Clause
	3	Effective Date
118	1-2	Rep. Ch. 263, Sec. 158, L. 1955
119	1	79-210
	2	Repealing Clause
120	1	1-501
	2	Repealing Clause
121	1	4-347
	2	4-357
	3	Repealing Clause
	4	Effective Date
122	1	16-1175
	2	16-1176
	3	16-1177
	4	16-1178
	5	Repealing Clause
	6	Effective Date
123	1	46-2102
	2	Repealing Clause
	3	Effective Date
124	1	Rep. Ch. 74, Sec. 1, L. 1957
	2	Repealing Clause
	3	Effective Date
125	1	36-306
	2	Repealing Clause

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126	1	94-901
	2	94-904
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127	1	16-1201 to 16-1223
	2	Repealing Clause
	3	Effective Date
128	1	82-1803
	2	Rep. Ch. 205, Sec. 3, L. 1955
	3	Rep. Ch. 205, Sec. 4, L. 1955
	4	Rep. Ch. 205, Sec. 5, L. 1955
	5	Repealing Clause
	6	Effective Date
129	1	51-103
	2	51-114
	3	Repealing Clause
	4	Effective Date
130	1	75-4607
	2	Rep. Ch. 120, L. 1953
	3	75-4609
	4	75-4610
	5	75-4611
	6	Repealing Clause
	7	Effective Date
131	1	59-1001
	2	59-1002
	3	59-1003
	4	59-1004
	5	59-1005
	6	59-1006
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	8	Repealing Clause
	9	Effective Date
132	1-3	Temporary
133	1	93-1401
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134	1	44-501
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	3	44-503
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	5	44-505
	6	44-506
	7	44-507
	8	44-508
	9	44-509
	10	44-510
	11	44-511
	12	44-512
	13	44-513
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	16	Repealing Clause
	17	Effective Date
135	1	93-3008
	2	Repealing Clause
	3	Effective Date
136	1	3-2701
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	3	3-2703
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	5	Repealing Clause
	6	Effective Date
137	1	84-4818
	2	84-4819
	3	84-4820
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	8	Separability Clause
	9	84-4825
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	11	Repealing Clause
138	1	27-501
	2	27-502
	3	27-503
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	7	27-507
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	9	27-509
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	11	27-511
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	14	27-514
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	17	27-517
	18	27-518
	19	27-519
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	21	Separability Clause
	22	Repealing Clause
	23	Effective Date
139	1	11-1202
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	3	Effective Date
140	1	4-104 to 4-108
	2	Effective Date
141	1-6	Rep. Ch. 112, Sec. 7, L. 1951
142	1	75-2511
	2	75-2512
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	6	75-2516
	7	75-2517
	7[7a]	75-2518
	8	75-2519
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	10	75-2521
	11	Repealing Clause
143	1	94-35-106
	2	94-35-106.1
	3	Repealing Clause

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144	1	16-1024
	2	Repealing Clause
	3	Effective Date
145	1	81-1401
	2	Repealing Clause
	3	Effective Date
146	1	75-4230
	2	Rep. Ch. 106, Sec. 1, L. 1951
	3-4	Repealing Clause
147	1	72-409
	2	Repealing Clause
	3	Effective Date
148	1	46-2401
	2	46-2402
	3	46-2403
	4	46-2404
	5	46-2405
	6	46-2406
	7	Repealing Clause
	8	Effective Date
149	1	52-301
	2	Repealing Clause
	3	Effective Date
150	1	52-201
	2	Repealing Clause
	3	Effective Date
151	1	14-530
	2	Repealing Clause
	3	Effective Date
152	1	26-105
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	3	Effective Date
153	1	44-401
	2	44-402
	3	44-403
	4	44-404
	5	44-405
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	13-14	Repealing Clause
154	1-5	Const. Amend. Defeated
155	1	71-405
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156	1	26-220 to 26-224
	2	Repealing Clause
	3	Effective Date
157	1	26-301
	2	Repealing Clause
158	1	31-205
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	3	Effective Date
159	1	69-1803
	2	Repealing Clause
	3	Effective Date
160	1	23-807
	2	Repealing Clause
161	1	81-1403
	2	Effective Date
162	1	4-114
	2	Repealing Clause
	3	Effective Date
163	1	75-1406
	2	Repealing Clause
164	1	4-403
	2	Repealing Clause
	3	Effective Date
165	1	4-333
	2	Repealing Clause
	3	Effective Date
166	1	75-2401
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	3	Repealing Clause
	4	Effective Date
167	1	Rep. Ch. 230, Sec. 2, L. 1957
	2	Repealing Clause
168	1	84-1818
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169	1	80-103
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	3	Repealing Clause
170	1-4	16-1901 note
171	1	16-1301
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172	1	69-2308
	2	69-2309
	3	69-2310
	4	Repealing Clause
	5	Effective Date
173	1	26-901
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	3	Rep. Ch. 184, Sec. 6, L. 1951
	4	26-904
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	7	Repealing Clause
174	1	90-125
	2	Repealing Clause
	3	Effective Date
175	1	25-306
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176	1	81-209
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	3	Repealing Clause
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177	1	25-605, 25-608, 25-609
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178	1	87-103 and 87-104
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	3	Repealing Clause
	4	Effective Date
179	1	10-701
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	3	10-703
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	7	Repealing Clause

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180	1	61-137
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181	1	61-130
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182	1	25-501
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	4	Repealing Clause
	5	Effective Date
183	1	11-1912
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	3	Effective Date
184	1-8	Rep. Ch. 142, Sec. 15, L. 1955
185	1	50-403
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	10	50-424
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	27	50-455
	28	50-472
	29	50-473
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	31	Separability Clause
	32	Repealing Clause
186	1-3	Special
187	1	84-4191
	2	Repealing Clause
	3	Effective Date
188	1	11-725
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	4	Repealing Clause
	5	Effective Date
189	1	11-3123
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	3	Effective Date
190	1	81-432
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190	4	81-435
	5	Repealing Clause
	6	Effective Date
191	1	75-3729
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	3	Repealing Clause
	4	Effective Date
192	1	71-1003
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193	1-3	Const. Amend. Adopted, Art. XIII, § 6
194	1	11-1925
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	4	Effective Date
195	1-10	Temporary
196	1	84-4910
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197	1	94-2429
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	3	Effective Date
199	1	75-3610
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	6	75-3614
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200	1	75-3401
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	5	Effective Date

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	4	Effective Date
202	1	84-1802
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203	1	66-2401
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	12	Repealing Clause
204	1	16-1130
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205	1	78-204
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	4	Separability Clause
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	6	Effective Date
206	1	Appropriation
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	6	38-1101
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	18	Repealing Clause
	19	Effective Date
207	1	84-4908
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	3	Repealing Clause
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208	1-13	Temporary
209	1	4-102
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1	1	26-133
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2	1	11-2282
	2	Repealing Clause
	3	Effective Date
3	1	89-856
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4	1	12-330
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5	1	15-1713
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	3	Effective Date
6	1	26-105
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	3	Effective Date
7	1	Rep. Ch. 66, Sec. 7, L. 1955
	2	Repealing Clause
	3	Effective Date
8	1-5	Temporary
9	1	11-1815
	2	Repealing Clause
10	1	11-730
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11	1	3-809
	2	3-810
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12	1	23-605
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13	1	94-2807
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	3	Effective Date
14	1	91-2406
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15	1	93-4304
	2	Repealing Clause
	3	Effective Date
16	1	91-4415
	2	Repealing Clause
17	1	84-4907
	2	Repealing Clause
	3	Effective Date
18	1-5	Superseded by 79-2001 to 79-2003
19	1	5-1047
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	4	Repealing Clause
	5	Effective Date
20	1	91-423
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20	5	91-427
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	10	Separability Clause
21	1	76-104
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	3	Effective Date
22	1	59-510
	2	Repealing Clause
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23	1	84-4201
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	3	Repealing Clause
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24	1	11-1104
25	1	32-702
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26	1-3	Temporary
27	1	10-622
	2	Repealing Clause
	3	Effective Date
28	1	91-3801
	2	Repealing Clause
29	1	91-3802
	2	Repealing Clause
30	1	91-521
	2	Repealing Clause
31	1	91-520
	2	Repealing Clause
32	1	75-1813
	2	Repealing Clause
	3	Effective Date
33	1	66-1502
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	3	Repealing Clause
	4	Effective Date
34	1	Repealing Clause
	2	Effective Date
35	1	84-5801
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36	1	26-201
37	1	31-125
	2	Repealing Clause
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38	1	11-2285
39	1	89-903
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40	1	26-104
41	1	35-401
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	8	Repealing Clause
	9	Effective Date
42	1	3-2004
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43	1	90-201
	2	Repealing Clause
44	1-4	Rep. Ch. 57, Sec. 1, L. 1953
45	1	84-301
	2	Repealing Clause
	3	Effective Date
46	1	76-117
	2	Repealing Clause
	3	Effective Date
47	1	11-1832
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48	1	92-701
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49	1	93-1906
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50	1	84-5901
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	9	84-5909
	10	Repealing Clause
	11	Effective Date
51	1	11-1932
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52	1	84-1801
	2	Repealing Clause
	3	Effective Date
53	1	82-1519
	2	Repealing Clause
	3	Effective Date
54	1	91-3901
	2	Repealing Clause
55	1	24-138
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	3	Effective Date
56	1	93-601-2
	2	Repealing Clause
57	1	84-5403
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	3	Effective Date
58	1	26-107
	2	Repealing Clause
59	1	16-1709
	2	Repealing Clause
	3	Effective Date
60	1	16-1710
	2	Repealing Clause
	3	Effective Date
61	1	81-1704
	2	Repealing Clause
	3	Effective Date
62	1	81-2118
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	3	Effective Date
63	1	75-2016
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64	1	23-929
	2	Rep. Ch. 266, Sec. 8, L. 1955
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65	1	75-3902
66	1	71-1301
	2	71-1302
	3	Repealing Clause
67	1	93-314
68	1	94-4120
	2	Repealing Clause
	3	Effective Date
69	1	11-1821
	2	Repealing Clause
70	1	11-2803
	2	Separability Clause
	3	Repealing Clause
	4	Effective Date
71	1	84-4176
	2	Repealing Clause
	3	Effective Date
72	1	16-1002
	2	Repealing Clause
73	1	80-920
	2	80-920 note
	3	Repealing Clause
	4	Effective Date
74	1	94-1475
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	3	Repealing Clause
75	1	12-317
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76	1	75-3734
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77	1	5-1050
	2	5-1051
	3	5-1052
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	6	Repealing Clause
	7	Effective Date
78	1	Rep. Ch. 227, Sec. 4, L. 1957
	2	Repealing Clause
	3	Effective Date
79	1	91-4423
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80	1	26-1123
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81	1	26-106
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	5	Rep. Ch. 79, Sec. 2, L. 1955
	6	26-124
	7	Repealing Clause
	8	Effective Date
82	1	75-310
	2	Repealing Clause
83	1	Repealing Clause
84	1	93-303
	2	Repealing Clause
	3	Effective Date
85	1-9	Rep. Ch. 41, Sec. 9, L. 1953
86	1-2	Rep. Ch. 158, Sec. 3, L. 1955
87	1	11-3123
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88	1	84-5718
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	3	Repealing Clause
	4	Effective Date
89	1	Repealing Clause
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90	1	Repealing Clause
	2	Effective Date
91	1	75-2520
92	1	75-107
	2	Repealing Clause
	3	Effective Date
93	1	9-209
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	3	Repealing Clause
94	1	9-209.1
	2	Repealing Clause
95	1	32-1018
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96	1	11-1018
	2	Repealing Clause
	3	Effective Date
97	1	4-410
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98	1	71-219
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99	1	81-803
	2	Repealing Clause
100	1	16-912
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101	1	11-1019
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	3	Repealing Clause
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102	1	84-607
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103	1	46-1501
104	1-7	Special
105	1	11-3135
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106	1	Repealing Clause
	2	75-4231
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	4	Repealing Clause
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107	1	75-3611
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108	1	75-506.1
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109	1	75-1522
	2	Repealing Clause
110	1	84-4931
	2	Repealing Clause
	3	Effective Date
111	1	53-106
	2	Repealing Clause
112	1	3-2801
	2	3-2802
	3	3-2803
	4	3-2804
	5	3-2805
	6	Separability Clause
	7	Repealing Clause
	8	Effective Date
113	1	84-3701
	2	Repealing Clause
114	1	75-1319
	2	Repealing Clause
	3	Effective Date
115	1	11-725
	2	11-729
	3	11-731
	4	Repealing Clause
	5	Effective Date
116	1	11-2303
	2	Effective Date
117	1	81-304
	2	Repealing Clause
118	1	25-605
119	1-7	Special
120	1-4	Temporary
121	1	26-201
	2	Repealing Clause
122	1	93-3008
	2	93-3010
	3	Repealing Clause
	4	Effective Date
123	1	66-505
	2	66-512
	3	Repealing Clause
	4	Effective Date
124	1	59-801
	2	59-802
	3	Repealing Clause
	4	Effective Date
125	1	75-2013
	2	75-2014
	3	75-2015
126	1	26-301
	2	Repealing Clause
127	1	3-2001
	2	3-2002
	3	3-2006
	4	Repealing Clause
	5	Effective Date
128	1	16-1803
129	1	3-1705
	2	Repealing Clause
	3	Effective Date
130	1	90-132
	2	Repealing Clause
	3	Effective Date
131	1	25-227
	2	Repealing Clause
	3	Effective Date
132	1-5	Const. Amend. Defeated
133	1-2	Rep. Ch. 150, Sec. 2, L. 1955
134	1	26-319
	2	Repealing Clause
135	1	31-135
	2	Repealing Clause
	3	Effective Date
136	1	25-604
	2	Repealing Clause
137	1	82-1149
	2	Repealing Clause
138	1	16-1201 to 16-1222
	2	Repealing Clause
	3	Effective Date
139	1	24-142
	2	Repealing Clause
	3	Effective Date
140	1	26-1401
	2	26-1402
	3	26-1403
141	1	31-117
	2	Repealing Clause
	3	Effective Date
142	1	Rep. Ch. 267, Sec. 5, L. 1955
143	1	90-101
	2	90-125
	3	90-126
	4	90-136
	5	90-137
	6	90-147
	7	Repealing Clause
	8	Effective Date
144	1	4-403
	2	Repealing Clause
	3	Effective Date
145	1	11-2403
	2	11-2404
146	1	11-2218
147	1-3	Special
148	1	89-116.1
	2	89-116.2
	3	Repealing Clause
	4	Effective Date
149	1	77-412
	2	Repealing Clause
150	1	87-145
	2	Separability Clause
	3	Repealing Clause
	4	Effective Date
151	1	16-2050
	2	Repealing Clause
	3	Effective Date
152	1	59-1001
	2	Repealing Clause
	3	Effective Date

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153	1	26-344
	2	Repealing Clause
154	1	69-3101
	2	69-3102
	3	69-3103
	4	69-3104
	5	69-3105
	6	69-3106
	7	69-3107
	8	Repealing Clause
	9	Separability Clause
	10	Effective Date
155	1	3-801
	2	3-802
	3	3-805
	4	3-807
	5	Separability Clause
	6	Repealing Clause
	7	Effective Date
156	1	71-302
	2	71-503
	3	Repealing Clause
157	1	71-601
	2	71-602
	3	71-604 note
	4	71-607 note
	5	Repealing Clause
	6	Effective Date
158	1	3-301
	2	3-302
	3	3-306
	4	Repealing Clause
	5	Effective Date
159	1	81-924
	2	Effective Date
160	1	71-1201
	2	71-1202
	3	71-1203
	4	71-1204
	5	71-1205
	6	71-1206
	7	71-1207
	8	71-1208
	9	71-1209
	10	71-1210
	11	Repealing Clause
	12	Effective Date
161	1	4-439
	2	Repealing Clause
162	1	8-127
	2	Repealing Clause
	3	Effective Date
163	1	75-3403
	2	Repealing Clause
	3	Effective Date
164	1	81-209
	2	Repealing Clause
165	1	4-101
	2	4-236
	3	Repealing Clause
	4	Effective Date
166	1	4-301
	2	4-302
	3	4-307
	4	4-317
	5	4-318
	6	4-317.1
	7	4-330
	8	4-342
	9	4-344
	10	4-349
	11	4-358
	12	Repealing Clause
	13	Effective Date
167	1	81-1401
	2	Repealing Clause
168	1	75-201
	2	75-203
	3	75-204
	4	75-205
	5	75-206
	6	Repealing Clause
	7	Effective Date
169	1	16-1015
	2	Repealing Clause
170	1	91-3013
	2	Repealing Clause
	3	Effective Date
171	1	Repealing Clause
	2	Effective Date
172	1	Repealing Clause
173	1	16-214
	2	16-223
	3	Repealing Clause
	4	Effective Date
174	1	6-501
	2	Effective Date
175	1	15-1901
	2	15-1902
	3	15-1903
	4	15-1904
	5	15-1905
	6	15-1906
	7	15-1907
	8	15-1908
	9	Effective Date
176	1	15-1603
	2	Repealing Clause
177	1	41-1601
	2	41-1602
	3	41-1603
	4	41-1604
	5	41-1605
	6	3-101.1
	7	3-109
	8	41-1606
	9	41-1607
	10	41-1608
	11	41-1606 note
	12	41-1609
	13	Repealing Clause
	14	Effective Date
178	1	84-301
	2	Separability Clause
	3	Effective Date
179	1	16-1122
	2	Repealing Clause
	3	Effective Date

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180	1	75-3901
	2	Repealing Clause
181	1	91-4405
	2	Repealing Clause
	3	Effective Date
182	1	75-3618
	2	75-1816
	3	75-1817
	4	75-4534
	5	75-4535
	6	Repealing Clause
	7	Effective Date
183	1	4-104 to 4-108
	2	Effective Date
184	1	26-901
	2	26-902
	3	26-904
	4	26-905
	5	26-906
	6	Repealing Clause
	7	Effective Date
	8	Repealing Clause
185	1-9	Temporary
186	1	68-102
	2	68-202
	3	68-401
	4	68-501
	5	68-801
	6	68-901
	7	68-1101
	8	Separability Clause
	9	Repealing Clause
	10	Effective Date
187	1	31-105
	2	Repealing Clause
188	1	75-4601
	2	75-4602
	3	75-4605
189	1	75-3401
	2	75-3404
	3	75-3405
	4	75-3406
	5	75-3407
	6	75-3412
	7	75-3413
	8	75-3414
	9-10	Repealing Clause
190	1	92-709A
	2	Effective Date
191	1	43-103
	2	43-104
192	1	84-4701
193	1	41-1701
	2	41-1702
	3	41-1703
	4	41-1704
	5	41-1705
	6	41-1706
	7	Separability Clause
	8	41-1707
194	1	82-106
	2	82-107
	3	82-108
	4	82-109
	5	82-102
	6	82-110
	7	79-1002
	8	79-1004
	9	79-1004.1
	10	79-1005
	11	82-111
	12	82-1901
	13	Temporary
	14	Separability Clause
	15-16	Repealing Clause
	17	Effective Date
195	1-7	Special
196	1-6	Superseded by 77-905 to 77-908
197	1	40-1943
	2	40-1944
	3	40-1945
	4	40-1946
	5	Repealing Clause
	6	Effective Date
198	1-9	Temporary
199	1	71-204
	2	71-210
	3	71-211
	4	71-216
	5	71-221
	6	71-222
	7	71-223
	8	71-306
	9	71-308
	10	71-309
	11	71-311
	12	71-312
	13	71-313
	14	71-314
	15	71-402
	16	71-403
	17	71-404
	18	71-405
	19	71-406
	20	71-413
	21	71-502
	22	71-504
	23	71-505
	24	71-506
	25	71-507
	26	71-510
	27	71-604
	28	71-605
	29	71-606
	30	71-607
	31	Repealing Clause
	32	71-611
	33	71-612
	34	Repealing Clause
200	1	40-2402
	2	Repealing Clause
201	1-17	Unconstitutional
202	1	4-407.1
	2	Repealing Clause

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203	1	82-2701
	2	82-2702
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	5-7	Appropriation
	8	Repealing Clause
204	1	53-418
	2	53-419
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	4	53-421
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	6	53-423
	7	53-424
	8	53-425
	9	53-426
	10	53-427
	11	53-428
	12	53-429
	13	53-430
	14	53-431
	15	53-432
	16	53-433
	17	53-434
	18	53-435
	19	53-436
	20	53-437
	21	53-438
	22	53-439
	23	53-440
	24	53-441
	25	53-442
	26	53-443
	27	53-444
	28	53-445
	29	53-446
	30	53-447
	31	53-448
	32	53-449
	33	53-450
	34	53-451
	35	53-452
	36	53-453
	37	53-454
	38	53-455
	39	53-456
	40	Separability Clause
	41	53-457
	42	Appropriation
	43	53-458
	44	Repealing Clause
	45	Effective Date
205	1-3	Special
206	1	61-137
	2	Repealing Clause
207	1	75-1625
	2	75-1630
	3	75-1632
	4	75-3404
	5	Repealing Clause
	6	Effective Date
208	1	75-1713.1
	2	75-1723
	3	75-4518.1
	4	75-4516.1
	5	Repealing Clause
	6	Effective Date
209	1	77-601
	2	Repealing Clause
	3	Effective Date
210	1	75-3801
	2	Repealing Clause
	3	Effective Date
211	1	16-3408 and 25-236
	2	Repealing Clause
	3	Effective Date
212	1	84-6101
	2	84-6102
	3	84-6103
	4	84-6104
	5	Effective Date
213	1	77-1401
	2	77-1402
	3	77-1403
	4	77-1404
	5	Effective Date
214	1	77-1201
	2	77-1202
	3	77-1203
	4	77-1204
	5	77-1205
	6	77-1206
	7	77-1207
	8	77-1208
	9	77-1209
	10	77-1210
	11	77-1211
	12	77-1212
	13	77-1213
	14	77-1214
	15	77-1215
	16	Appropriation
	17	Separability Clause
	18	Repealing Clause
	19	Effective Date
215	1	94-4411
	2	94-4412
	3	94-4413
	4	94-4414
	5	94-4415
	6	94-4416
	7	94-4417
	8	94-4418
	9	94-4419
	10	94-4420
	11	94-4421
	12	94-4422
	13	94-4423
	14	94-4424
	15	94-4425
	16	94-4426
	17	94-4427
	18	Separability Clause

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216	1	75-4901
	2	75-4902
	3	Effective Date
217	1	92-1005
	2	Repealing Clause
218	1	77-1301
	2	77-1302
	3	77-1303
	4	77-1304
	5	77-1305
	6	77-1306
	7	77-1307
	8	77-1308
	9	77-1309
	10	77-1310
	11	77-1311
	12	77-1312
	13	77-1313
	14	Separability Clause
	15	Appropriation
	16	Effective Date
219	1	53-615
	2	53-616
	3	53-617
	4	53-618
	5	53-619
	6	53-620
	7	53-621
	8	53-622
	9	53-623
	10	53-624
	11	53-625
	12	53-626
	13	53-627
	14	53-628
	15	53-629
	16	Separability Clause
	17	Effective Date
	18	Repealing Clause
220	1	75-2006
	2	75-2008
	3	Repealing Clause
221	1	53-122
	2	Repealing Clause
222	1	94-901-1
	2	94-901-2
	3	94-901-3
	4	94-901-4
	5	94-901-5
	6	94-901-6
	7	94-901-7
	8	94-901-8
	9	94-901-9
	10	94-901-10
222	11	94-901-11
	12	94-901-12
	13	94-901-13
	14	94-901-14
	15	94-901-15
	16	94-901-16
	17	94-901-17
	18	94-901-18
	19	Separability Clause
	20	Repealing Clause
	21	Effective Date
223	1	11-3701
	2	11-3702
	3	11-3703
	4	11-3704
	5	11-3705
	6	11-3706
	7	11-3707
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	9	11-3709
	10	11-3710
	11	11-3711
	12	11-3712
	13	11-3713
	14	11-3714
	15	11-3715
	16	11-3716
	17	11-3717
	18	11-3718
	19	11-3719
	20	11-3720
	21	11-3721
	22	11-3722
	23	11-3723
	24	11-3724
	25	11-3725
	26	Separability Clause
224	1	68-501
	2	Effective Date
225	1	92-715
	2	Repealing Clause
	3	Effective Date
226	1-3	Temporary
227	1	79-503
	2	79-504
	3	79-505
	4	Repealing Clause
	5	Effective Date
228	1-7	Rep. Ch. 80, Sec. 1, L. 1953
229	1	81-433
	2	Repealing Clause
	3	Effective Date

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No. 54	1-15	Temporary
	16	84-5606, 84-5621
	17-21	Temporary

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1	1-3	Temporary
2	1-5	Superseded by 79-2001 to 79-2003
3	1	Repealing Clause
	2	Effective Date
4	1	Repealing Clause
	2	Effective Date
5	1	50-301
	2	Repealing Clause
6	1	23-911
	2	23-913
7	1	78-701
	2	78-702
	3	78-703
	4	78-704
	5	78-705
	6	78-706
	7	78-707
	8	78-708
	9	78-709
	10	Separability Clause
	11	Effective Date
8	1	23-932
9	1	93-1801-4
	2	Effective Date
10	1	93-5011
11	1	61-127
	2	Repealing Clause
12	1-2	Repealing Clauses
13	1	52-313
	2	Repealing Clause
14	1	40-2103
	2	40-2107
	3	40-2108
	4	40-2112
	5	Repealing Clause
15	1	93-305
16	1	93-3820
	2	Repealing Clause
17	1-5	71-106 note
18	1	28-402
	2	Repealing Clause
	3	Effective Date
19	1	26-201
20	1-8	Rep. Ch. 157, Sec. 2, L. 1955
21	1	75-1630
	2	Repealing Clause
	3	Effective Date
22	1	75-4230
	2	Repealing Clause
	3	Effective Date
23	1	75-1813
	2	Repealing Clause
	3	Effective Date
24	1	71-223
	2	Repealing Clause
	3	Effective Date
25	1	28-130
	2	28-130 note
	3	28-131
	4	28-132
	5	28-133
	6	28-134
	7	Repealing Clause
26	1	71-202
	2	Repealing Clause
	3	Effective Date
27	1-4	Superseded by 77-905 to 77-908
	5	Rep. Ch. 201, Sec. 5, L. 1955
	6	Effective Date
28	1	82-806
	2	82-807
	3	82-809
	4	Effective Date
29	1	53-106
	2	Separability Clause
	3	Repealing Clause
	4	Effective Date
30	1	16-1009
	2	Repealing Clause
	3	Effective Date
31	1	32-1901
	2	32-1902
	3	32-1903
	4	32-1904
	5	32-1905
	6	32-1906
	7	32-1907
	8	32-1908
	9	32-1909
	10	32-1910
	11	32-1911
	12	32-1912
	13	32-1913
	14	32-1914
	15	32-1915
	16	Separability Clause
	17	Repealing Clause
32	1	91-4704
33	1	38-406
34	1-2	Repealing Clauses
	3	Effective Date
35	1	82-1103
36	1	31-138
	2	Repealing Clause
	3	Effective Date
37	1	46-2501
	2	46-2502
	3	46-2503
	4	46-2504
	5	46-2505
	6	46-2506
	7	46-2507
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	9	46-2509

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37	10	46-2510
	11	46-2511
	12	46-2512
	13	46-2513
	14	46-2514
	15	46-2515
	16	Separability Clause
	17	Repealing Clause
	18	Effective Date
38	1	92-701
	2	92-702
	3	92-703
	4	92-704
	5	92-709
	6	92-705
	7	92-706
	8	92-823
	9	Repealing Clause
39	1	11-2286
	2	11-2287
	3	Repealing Clause
	4	Effective Date
40	1	91-2702
41	1	84-6008
	2	84-6009
	3	84-6010
	4	84-6011
	5	84-6012
	6	84-6013
	7	84-6014
	8	Separability Clause
	9	Repealing Clause
	10	Effective Date
42	1	71-1003
	2	Repealing Clause
	3	Effective Date
43	1	84-4907.1
	2	Repealing Clause
	3	Effective Date
44	1	59-1101
	2	59-1102
	3	59-1103
	4	59-1104
	5	59-1105
	6	59-1106
	7	59-1107
	8	59-1108
	9	Separability Clause
	10	Repealing Clause
	11	Effective Date
45	1	11-1821
	2	Effective Date
46	1	15-1801
	2	Repealing Clause
47	1	41-113
	2	41-114
	3	41-115
	4	41-116
48	1	5-905
	2	Repealing Clause
	3	Effective Date
49	1	5-904
	2	Repealing Clause
	3	Effective Date
50	1	5-906
	2	Repealing Clause
	3	Effective Date
51	1	25-306
	2	Repealing Clause
52	1	81-2118.1
	2	Repealing Clause
	3	Effective Date
53	1	81-2118.2
	2	Repealing Clause
	3	Effective Date
54	1	11-1825
	2	Repealing Clause
	3	Effective Date
55	1	23-1006
56	1	91-1001
	2	Repealing Clause
	3	Effective Date
57	1	Repealing Clause
	2	Effective Date
58	1	5-910
	2	Repealing Clause
	3	Effective Date
59	1	5-908
60	1	23-1307
	2	Repealing Clause
61	1	75-3310
	2	75-3311
	3	Repealing Clause
	4	Effective Date
62	1	91-4421
	2	Repealing Clause
	3	Effective Date
63	1	46-2601
	2	46-2602
	3	46-2603
	4	46-2604
	5	46-2605
	6	46-2606
	7	46-2607
	8	46-2608
	9	46-2609
	10	46-2610
	11	46-2611
	12	Separability Clause
	13	Repealing Clause
	14	Effective Date
64	1-2	Rep. Ch. 66, Sec. 7, L. 1955
65	1	94-7823
	2	Effective Date
66	1	84-3201
67	1	11-1923
68	1	35-104
	2	35-109
	3	Repealing Clause
	4	Effective Date
69	1	16-3701
	2	Effective Date

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70	1	89-2702
	2	89-2704
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	4	Effective Date
71	1	4-413
	2	Repealing Clause
72	1	23-1109
	2	23-1110
	3	23-1112
	4	Repealing Clause
73	1	32-1123
	2	Repealing Clause
	3	Effective Date
74	1	Rep. Ch. 33, Sec. 1, L. 1957
	2	Effective Date
75	1	11-2008
	2	11-2010
	3-4	Repealing Clauses
	5	Effective Date
76	1	11-725
	2	11-726
	3	11-728
	4	11-729
	5	11-731
	6	Repealing Clause
	7	Effective Date
77	1	78-801
	2	78-802
	3	78-803
	4	78-804
	5	78-805
	6	78-806
	7	78-807
	8	78-808
	9	78-809
	10	Separability Clause
	11	Effective Date
78	1	69-2910.1
	2	Repealing Clause
79	1	Repealing Clause
80	1	Repealing Clause
81	1	39-103.1
	2	Repealing Clause
82	1	11-614.1
	2	Repealing Clause
83	1	23-503
	2	Repealing Clause
	3	Effective Date
84	1	32-314
	2	Repealing Clause
85	1	Repealing Clause
86	1	82-2801
	2	82-2802
	3	82-2803
87	1	82-2901
	2	82-2902
	3	82-2903
88	1	3-2313
89	1	3-202
90	1	25-231
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91	1	Repealing Clause
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96	1	53-113
97	1	3-109.1
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98	1	82-1011
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99	1	27-501
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101	1	82-109
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102	1	87-117
	2	Repealing Clause
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103	1	93-6207
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108	1	66-1403
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109	1	84-702
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110	1	3-103
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111	1	84-4907
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112	1	10-622
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142	1	80-210
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159	1	16-1907
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160	1	87-148
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161	1	92-104
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169	1	21-106
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170	1	91-502
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171	1	82-303
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179	1	71-231.1
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197	1	79-902
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204	1	71-1004
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207	1	75-3611
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208	1	11-3253
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